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#### SPECIAL NUMBER

ON

# ADMINISTRATION FOR CHILD WELFARE

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## **EDITORIAL**

WE ARE happy to present this Special Number for more than one reason. This is our modest effort towards a purposive celebration of the International Year of the Child, to give some content and meaning to what it stands for. The IYC is being taken note of differently by different people. We have chosen the specific field of administration for children's welfare, which is not only within our sphere of interest but also of vital importance for the success of our programmes and aspirations. In this field we have done as best as we can marshalling several writers and collecting information from several sources and highlighting the problems in the administration of child welfare measures in this country, and, by way of illustration, in a few countries abroad.

The primary purpose of the IYC itself is to generate wide and sustained interest and activities on behalf of children in every country, realising that there is a close link between programmes for social and economic development and those directly concerned with the life of children. How many laws are there on the statute book in India alone purported to be for children? One recent count puts the amazing number of no less than 115. Incredible as this looks, how many of us are aware how and on what occasion these laws are to be put to use? Assuming that they cover both the welfare aspect of children and also stand against their misdemeanour, it still passes one's comprehension as a citizen as to why this country, with such a large number of statutory laws, should still be so low among several nations in caring for and protecting its children. It is true that several of these laws are Dickensian in flavour and several others seem operationally impractical due to a variety of reasons. Even if we assume that the laws themselves are not totally unfeeling, their interpretation and administration very often are. It is at this point

that the significance of this Special Number arises. Without harping on maudlin sentiment, we have tried to cover several areas in the organising and administering of welfare activities for children and. in the process, we have stressed the deficiencies and gaps in the existing legislations and the weaknesses that show up while implementing them. We have also inquired into the structure and working of child welfare institutions and pointed out how several of them are far from realistic and seemingly thoughtless vis-a-vis the children's interests which they are supposed to safeguard. Even the guardianship of the state is open to misuse, as several writers recall in their articles in the pages that follow. There are suggestions simultaneously for legislative and administrative reform but, clearly, legal reform by itself may not go far enough, for, as the writers aver in this Number, a lot depends on how the law is applied. Much also depends on the attitude, the demeanour, and the imagination of those who actually handle children's problems—both the state and the welfare voluntary organisations; for, after all, the aim is to provide compassion where it is denied in a harsh socio-economic system and to salvage as many as possible from among the misguided young so as to convert them into useful citizens. This, we persuade ourselves, is the ultimate object of all laws on behalf of children and the purpose of their administration. And this should also be the purpose behind the Year of the Child.

The concept of child welfare takes on the whole child and the services in his favour start, in fact, from the pre-natal care of the mother herself. These services, thereafter, run through the entire range of measures of specific protection and care right up to the age where childhood stops. No single measure, by itself, however laudable, may be adequate; it may, in fact, prove to be counter-productive on occasion. Similarly, child welfare puts the child right in the midst of the family, for the problems of children are, to a very large extent, traced and traceable to the family ethos. In India, for instance, one reason for the relative ineffectiveness of child welfare programmes is attributed as much to the abysmal poverty of the family as to the total ignorance of child care in the modern sense, and rightly too. Here, in fact, lies the difference in policy and execution between the child welfare measures in underdeveloped countries in general and of those in the affluent and the developed. From which stems yet another concept—the societal conditions which prevail in any given country at a given time. These directly influence and circumscribe the child welfare measures, both at their policy and execution stages. The policy maker cannot forget the social conditions when he plans welfare measures for children nor can the administrator overcome the atmosphere and the circumstances in which a given child welfare or benefit law is sought to be enforced. Transplantation of policies

and institutions without giving thought to the differing social climate will end up only in waste.

At the back of it all, is the role of the state which, at present, is obviously crucial, whether in regard to framing of policy for children, assisting voluntary effort in a scientific manner, financing their welfare measures or in executing them. But it is good to remember that it is not long ago that the state was unconcerned about child protection under the specious plea of laissez faire. The abuses of the factory system under which a 'child labour force' could be recruited and made to work for long hours from about the age of eight are still fresh in the pages of British history. Elsewhere in the world children's plight was equally unmitigated till perhaps the first Factory Act in 1833 in England. The state's evolution from then on to the present welfare state is indeed remarkable and is slowly gaining acceptance. But it is being questioned in certain quarters whether this is the last and the best form of state's role in child protection. There can be more than one opinion on this. Already thought is veering round to the point that the state's role should not tend to be too overwhelming and that it should better accept a more modest one of pioneering, facilitating, and safeguarding children's interests. The state should not aspire to supplant the family in regard to child care but only supplement it; the family should be accepted as the unit around which child welfare measures will be built, except where there is the danger of the child being exploited by misguided parents. Hence, it is held by some that the state should be concerned more with the effort in child welfare, its formulation and measurement, and not with the result of such welfare measures in any totalitarian spirit. In other words, the cohesiveness and dignity of the family should be harmonised with the imperatives of public policy, social conscience and social ethos.

The means of administering child welfare measures, the institutions that handle children, the structure and functioning of these institutions, the personnel available to them, their finances, the latteral and vertical coordination between the institutions, the avoidance of overlapping, the realistic programming and project formulation, harmonisation of the voluntary and governmental effort and efficiency to put the available resources to the best advantage of the children in their charge besides social mobilisation for this purpose—are all factors which need to be looked into by the planners of child welfare programmes here or elsewhere.

Broadly we touch upon all these aspects in this Special Number, besides several others. We have arranged the articles in a way that facilitates one in the understanding of the magnitude of the problem, while keeping the ultimate clientele of all child welfare programmes in perspective, viz., the children. The progress of the papers is from the general and the comprehensive to the particular; the treatment of the topics is from the macro to the micro.

Following the articles themselves in this order, we have presented two sets of surveys, of some selected countries abroad and then of selected Indian States. Both these series give in brief the range of services made available to the children in their respective areas of effort and the problems that they meet in their administration. Primarily they help us to realise that the advanced countries, while may not be short of funds for their child welfare measures, still encounter difficulties and face challenges which the underdeveloped countries have escaped so far or are yet to meet with. Urban conglomeration and the peculiar problems it creates for children, children's increasing addiction to drugs and drink, broken families, the deliberate neglect of children by their natural parents, urban juvenile crimes etc. are not as serious, nor as widely prevalent in the poorer countries, compared to the more affluent. This is clearly borne out in the surveys presented here of the UK, West Germany, East Germany, Netherlands, etc. What follows in the Indian States' surveys is, no doubt, a qualitative contrast so far as the problems go, but they invariably lead to the confession that the welfare measures in vogue are totally inadequate put against what is required and there is no way of meeting this scale of services for want of resources, both men and material. Besides, it underlines the need for adequate and informed policies and perspectives for the future as the small dark cloud on the horizon may take threatening proportions with the passage of time.

Writer after writer in this Number has drawn attention to the deadening effect on child welfare measures of the meagre funds available for the purpose and, what is equally deplorable, of the wasteful use of the available funds, what with the unimaginative approach to problems of welfare, the untrained personnel handling welfare measures and the unconscious twist resulting from peculiar conditions as obtain in specific areas and States in the country. For instance, child welfare measures in West Bengal have seemingly come to be confined to children in Calcutta; in Kerala more than proportionate importance is being given to child education, as experience has shown more scope for success here than in other fields of children's needs; in Tripura the anganwadi programme which had extensive popular support at one time has apparently been turned into a bureaucratic effort of late; Madhya Pradesh has to cope up with an enormous demand for child services in sheer terms of the number put against the resources at its command, etc. These should be enough to lay bare not only the position now but in a way to indicate what is in store for us if we visualise the child population in this country at the turn of this century.

This is what we start with in the book review section that follows the surveys. The World Bank's 'Atlas of the Child', reviewed here, gives a global estimate of the child population (as against the total) in 2000 A.D., that is, just some 20 years ahead. And the picture it gives of the underdeveloped countries like India is none too reassuring. In 2000 A.D. India will have to deal with roughly 400 million children (below 14) which is just about the total population of USA in 1975. One can only imagine the colossal investment required to look after this number besides the other ingredients called for in child welfare planning. The exact number may vary and that is part of the uncertainty of the population projections in the country. But what the planners should get ready is with the perspectives, the strategies and the institutions that will deliver the services whatever be the number that offers. Even a look at the relevant chapter in our draft Sixth Plan will serve as a poignant reminder of the enormity and complexity of the task.

We continue the review taking up several other books, mainly reports, dealing with one aspect or the other of child welfare. Some of these reports may ostensibly look a bit old. But the real justification for their review here is, one, they have not been always available to the public (several of them are mimeographed and confined to restricted groups) and, two, the problems they deal with are still with us and the solutions they offer are also relevant to the present. We feel that these will be of use to the social workers and scholars in the subject.

Bringing this Special Number to a close, we give in the document section supplementary reading by way of selected documents and records. The UN declaration of the rights of the child, India's national policy for children, a statistical profile of the Indian child, child labour in India, including India and the ILO conventions and, finally, the report of the recent seminar in Bombay on children's services in the 'eightees are the documents presented. Important by themselves, they also go with the earlier features and thus help the reader to get a panoramic view of the range of problems in the administration of child welfare measures.

In getting ready this Special Number we had to depend on the active cooperation of several distinguished writers and institutions and our gratitude extends to them all: each of the contributors and book reviewers; the Tata Institute of Social Sciences, Bombay; the Embassies in India of Austria, Bulgaria, Denmark, the FDR (and Franz Flamm, the author of 'Social Welfare Services in the Federal Republic of Germany'), the GDR, the Netherlands, and Tanzania;

the International Council for Social Welfare, Tokyo; UNICEF in India; the UNICEF Regional Office for the Americas in Chile; the ILO in Geneva and its branch in New Delhi; the Ministry of Labour, Government of India; the Department of Social Welfare, Government of India; the concerned departments in the different States; and several other bodies and individuals who prefer to be anonymous. We acknowledge the services of all the above and we feel that but for their willing cooperation and help, we may not have found it easy to bring out this volume.

We would be failing in our duty if we do not express our profound sense of gratitude to the members of IIPA and to our readers whose encouragement, appreciation and guidance have been all along with us as a source of inspiration and moral strength and which, then, prompts us to leave it to them to evaluate our effort.

-EDITOR

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# **EDITORIAL**

THE OPERATIONS and practices of the government do require a certain degree of secrecy. Negotiations with foreign governments are not always possible in the full gaze of publicity. Similarly it is not unusual that during war and external aggression governments may be interested in keeping certain matters hidden from its own citizens at least for some time so that the enemy does not get any fortuitous advantage. Besides, the morale of the people in general and of the forces is not to be jeopardised. Secrecy becomes an important factor in personal matters also, for example, regarding health records, financial status or banking operations of individuals. Even universities cannot dispense with secrecy altogether in the conduct of examinations and tests. Research organisations and research consultants have to have certain modicum of secrecy keeping in view their purpose. Even business and industrial organisations who often press for more openness in governmental policies and procedures, may themselves operate behind a veil of secrecy and it is not unusual when the government has to step in making it obligatory for them to disclose certain kinds of information. The non-disclosure of information of many kinds by the transnationals to both the host and the home countries have become a matter of controversy in many international forums. The press itself claims the privilege not to disclose its sources of information. This is considered to be a sacred trust and responsibility in the world of journalism. In view of the many scoops of 'investigative journalism' in many countries in the recent past, this has also become a matter of debate from the angle of individual right and public good.

It is the problem of secrecy in government that has caused widespread interest and concern all over the globe. It is so because of the direct interface of the government and the citizen especially in the context of the pervasiveness of the government in the life of the citizen because of the activist social and economic policies resulting from the temper of the times. It is the government which mobilises resources and allocates them for various purposes. Naturally the people are not only interested in the maximisation of resources and their optimum utilisation but also are desirous of knowing about the nature and category of the beneficiaries. Besides, the classic arguments of freedom versus arbitrariness are there. From a positive viewpoint, it is a question of communication within the government and in relation to the public if the government has to win the trust and support of the people. Expressing the inadequacy of 'representative' government, William A. Robson says: "We now realize that this is insufficient in a democracy to ensure mutual understanding between the governors and governed; and that without such understanding a high degree of popular participation is difficult to achieve. A widespread knowledge of the aims and purposes of government is necessary to secure consciousness of consent and popular support. Moreover, knowledge by the people of what the government wants them to do is essential for the success of much public administration". This provides the democratic rationale for greater openness in government.

Contributors to this volume discuss the question of administrative secrecy under several assumptions. They exclude the implications of secrecy under an authoritarian or totalitarian system as is commonly understood. The question of secrecy versus the public's right to know is more germane to democracy; and democracy, as observed by someone, is not only by discussion but also based on a healthy distrust of authority. Another assumption is that the three main wings of the state, viz., the legislature, the executive and the judiciary, maintain or establish an equilibrium in safeguarding public interest and, simultaneously, in ensuring that the right of the public to know is honoured in an environment, often of conflicting interests and viewpoints. Many writers refer to the power of the executive and the growing influence of the bureaucracy as one of the main reasons that inhibit a greater access to information. They plead for a greater role and administrative reinforcement of the legislature and the judiciary to cope with and contain this situation.

This entire question has to be viewed in a wide perspective in the differing conditions and constitutional and political systems in the different countries. The country-specificity is an important factor in making any judgement though the ideological shades may not altogether be ruled out. It is no doubt true that the policy-making and policy execution have both become so complicated a matter that all possible information must be available to the judiciary as well as to the people's representatives in the legislature if judicial control and democratic accountability of administration are to be effectively ensured.

Within these wide parameters the writers have taken up official secrecy and advanced their reasons for the enlargement of the area of openness and at the same time laid stress on the public's vigil to preserve what is their legitimate right to know more about how

they, the people, are governed. In the light of their views and analysis they have explored the problem in its theoretical dimensions and also with reference to specific countries and governments.

Several writers stress the dysfunctional aspects of secrecy also. The administrative policies, processes and procedures should bear an occasional scrutiny and publicity so that capricious actions as well as any odium of favouritism, discrimination and arbitrariness are avoided. George E. Berklev refers to the danger of accountability withering away and objectivity shrinking in an environment of secrecy. He goes on to say: "Those who are in the know tend to develop an arrogance and contempt for those who are not ... Secrecy obviously reduces communication and leaves decision-makers, even when they possess the best will in the world, with diminished capacity to make the best decisions". Again he draws attention to certain other aspects: "In limiting decision-making to a relatively few insiders. secrecy tends to limit discussion and debate. Frequently, the decision is made by those who are too personally involved and have too much at stake....Finally, trying to keep a matter hidden may only result in becoming better known. Secrecy sows suspicion: the more secret an agency is, the more it arouses fear and distrust". Occasionally, any attempt at secrecy only engenders misinformed and illinformed publicity or calculated leaks creating a miasma of suspicion.

The ramifications of the public's interest in knowing more about administration is not without pitfalls, for, it is seldom the 'public' but several 'publics' that a government deals with. The role of the pressure groups is relevant in this context. Again, the question is, how far are the people keen to know more about administration; for, even where a society is open, the avenues kept open are not always made use of by the public in whose name openness is sought. In fact, it is pointed out that even in the US where the freedom of access to information is quite liberal, there is a feeling that few bother to make use of the facilities, and the rest are unconcerned.

It can be conceded that openness is preferable to closeness. Several governments have however come to recognise the limits of openness in so far as anything beyond may encroach upon individual privacy. A distinction is made between 'secrecy' and 'privacy' and it is held that the right to privacy is an inviolable right of an individual. Information that a government gathers about an individual, particularly with computerisation, is growing and the risk of misuse, if not blackmail, is real. The US, for example, has passed a Privacy Act almost simultaneously with its Freedom of Information Act, the former to protect the individual from misuse of personal data with the government agencies.

The model for several of the countries is obviously Sweden where freedom of information has not only the longest tradition but is recognised as a constitutional right. Outside Europe, the US has gone the Swedish way but apparently not without a prolonged public struggle for recognition of the right to freedom of information and in the face of recorded hesitation on the part of the Presidents of the time.

Britain, on the other hand, has stuck to its 1911 Act although, over the years, public opinion has been veering round to the view that Section 2 of the 1911 Act is an anachronism. Several committees—the Fulton Committee and the Franks Committee, to mention two—have underlined the need for reform and the government itself had brought out a White Paper and a Green Paper to lend support to more openness. The Thatcher Government recently introduced a Bill in the House of Commons conceding the scope for enlargement of openness but, in view, apparently, of the spy scandal which exploded in that country recently, the new Bill has since been withdrawn.

Canada and Australia which had so far kept the British tradition and practice, recently moved forward with measures, pending before their legislature, to extend freedom of information to areas which hitherto had remained inaccessible to the public. The articles in the volume exemplify this aspect of the new direction that these countries have taken.

As regards India, the Official Secrets Act is modelled on the British statute and its clause 5 is a 'catch-all' provision, according to many commentators and jurists. Recently a working group went into the problem and reviewed the situation but it was felt that the present circumstances did not warrant any major change.

The Official Secrets Acts of both Britain and India are not directly concerned with openness in government. They primarily deal with information that needs to be protected from unauthorised disclosure. A reasonable way, in general, to prevent leakage of sensitive information is obviously by a proper classification of documents and by strictly enforcing the rule of 'need to know' among top civil servants while distributing copies of classified information, with the added provision of a regular procedure of declassification of documents, periodically, when they cease to be sensitive any more. Another safeguard can be to devise a system which really works regarding the correctness of the classification of information by entrusting this responsibility to a group of ministers who can exercise the necessary political judgement.

In the parliamentary form of government there is the added problem of ministerial responsibility to parliament and the ministers collectively being accountable to the people through parliament. This is quite often cited as a reason for official unwillingness to disclose information but, according to some, a direct correlation between ministerial responsibility and official secrecy may not be able to be established. In any case, the general consensus in Britain seems to be to liberalise the range of official information, the disclosure of which should no longer be a criminal offence.

The freedom of the press vis-a-vis official information is another area where there is considerable scope for a fresh look. Those who ask for free access to information argue that they are not trying to assert any special privilege, but only want to protect, what they consider to be, the press's own social function of informing the public. They further say that to the extent that access to information is denied to the press, there is the likelihood of a credibility gap between the government and the press and consequently the public. On the contrary, if information is denied, the media will come to rely on 'leaks', and such 'leaks' may happen to be inspired or prejudiced; both ways, it affects credibility. Denial of official information, especially to the press, often, leads to court cases in many countries and judicial interpretations have a vital bearing on openness.

It is not necessary here to refer to the valuable contributions in detail or to try to sum up their arguments. We may not agree in its entirety either with the analysis or even with the conclusions, but our purpose is not to arrive at any consensus, but only to stimulate thinking and debate on this topic. In an area where so much of thinking is going on, where laws and practices differ from country to country, no general formulations are possible as to the limits and the nature of secrecy in administration.

We will only conclude by drawing attention once again to Robson: "Knowledge by the people about their government is indispensable if democracy is to succeed. The government cannot operate successfully if its activities are veiled in ignorance, misunderstanding and mystery. Public authorities must come into the market place and tell people simply and clearly what they are trying to do and why. They should explain and justify their methods. They should be frank about difficulties and shortcomings. Only by a deliberate effort of this kind can prejudice and ignorant or malevolent criticism be avoided, and a discriminating body of public opinion built up.

"Without such a body of informed opinion the government is unlikely to be judged fairly. It will not be praised for its successes or blamed for its failures. And if the public cannot judge the quality of its government with some discrimination, that quality is unlikely to be high. Instead of sound schemes of constructive public administration we are likely to have demagogery, bread and circuses as in Argentina under Peron, or sabre-rattling as in Italy under Fascism.

Hence, part of the task of government is to enlighten the people about its purposes and programmes."

We are grateful to the distinguished writers and experts, especially those from abroad, who very kindly responded to our request for their learned contributions. We do hope this volume will add richly to the ongoing debate in this vital area of political process and public administration. Towards this, we have added a number of documents, in fact, a dozen of them, as supplementary reading material to the articles. Most of them are legislations already passed or are Bills under consideration in the legislature of the respective countries.

Shri Mohinder Singh and Shri R.N. Sharma of IIPA have compiled the bibliography and we acknowledge here their help as also that of Shri Avinash C. Maheshwary, South Asia Librarian, Duke University, North Carolina, who gave us a very useful supplementary list of books and articles available in that university library on the topic.

We wish the members of IIPA, subscribers and readers a very Happy New Year.

-EDITOR

# National Policy for Children

# V. Jagannadham

National Policy for children occupies a significant place in a special issue on child welfare administration. That policy precedes implementation is a common view but the dichotomy is now-a-days giving way to a continuum. An attempt is also made in this essay to refer to another continuum, namely, national, regional (State), local and community action continuum. These continuui play a prominent part in facilitating social development processes.

National policy for children is of recent origin as the concept of nation is no more than a couple of centuries old. Socialisation of new-born babies, however, is as old as mankind, if not universal, among living beings. Natural forces govern socialisation whereas civilisation requires acculturation of human infants through social engineering and development planning. The latter are a function of state action in cooperation with local communities and families. State intervention manifests itself in planning and providing services and institutions for demographic regulation, citizen development and community life.

Three elements of a national policy for children are: (i) population control, (ii) human resource utilisation, and (iii) promotion of social health. These three elements have a symbiosis about them. Regulated population growth helps optimum utilisation of human resources. Well utilised humans contribute to the maintenance of social harmony. Disturbance in the first causes corresponding distortions in the other two fileds and vice-versa. Whether in pre-industrial economies there was or was not a deliberate regulation to maintain zero-population growth rate, we are not sure. But demographic balance was, according to Malthus, achieved by external factors such as wars, famines, floods, diseases, etc. In India, besides these. local customs such as compulsory widowhood, sati, female infanticide, etc., also acted as indirect checks on run-away population growth. These inhuman customs and external forces are being brought under control, and a balance between fertility and mortality is being achieved by planned parenthood and family welfare policies and programmes. These regulatory measures are not, however, mentioned in the policy reassessment.

#### SOCIAL CARE OF CHILDREN-BACKGROUND

In a rural economy that prevailed for centuries previous to the onset of industrial economy, the larger the number of children in the family the greater was the economic and social security, as the whole family lived in one place with hardly any migration among its members. Industrialisation and urbanisation accelerated spatial and social mobility of family members causing thereby a structural-functional change in the family as a unit of social organisation. Such changes as above prompt the people to limit the number of children and prefer a small size family. Old values, however, die hard and the State is promoting awareness among parents to limit family size and provide services towards achieving that end. For ensuring the survival and healthy development of the few children born, governments are called upon to provide preventive and curative health services. With a view to maintain economic stability and social harmony, the states are to provide education, employment, social security and social welfare services for the family as a whole. These, in brief, are the goals towards realisation of which national policies for children are directed.

Public concern for the national care of children could be traced back to the regulation of the working and environmental conditions of children employed in factories and mines in the early stages of industrialisation. The concern grew serious when there was a large scale exploitation of child labour in hazardous occupations under the then laissez faire philosophy. Humanistic writers and collectivist economists prodded the state to intervene and legislate against exploitatory practices of private entrepreneurs. Those were the beginnings of the national policy for children in England and other European countries. After World War I, the International Labour Organisation, and since the end of World War II, the United Nations, through its member organisations, have been actively engaged in promoting international and national policies for children. The current year 1979, being celebrated as an International Year of the Child (IYC), is intended to observe, under the auspices of the UNICEF, completion of the two decades of the declaration of children's rights in 1959 and to stimulate awareness, advocacy and action for children by arousing the consciousness of adult citizens towards children.

Upto the adoption of the Indian Constitution in 1950, sporadic statutes of the Central and State Governments have been governing child welfare. For the first time the Constitution has, in its preamble, given expression to the vision of a new society based upon justice, liberty, equality and fraternity. Further to this, the Constitution, in Article 15(3), requires the children to be protected from discrimination on grounds of religion, race, caste, sex or place of birth. Article 24 prohibits employment of children below fourteen years in factories or mines or in hazardous employment. These two Articles are fundamental and justiciable as rights. Though non-justiciable, the directive principles of state policy, in Article 39 (e & f) require the Governments

to see that by force of economic necessity children are not required to join vocations unsuited to their age and strength. The directive principles also stipulate that children and youth should be protected against exploitation as well as against moral and material abandonment. More than these, a positive directive requires (Article 45) the state to provide free and compulsory education for all children below the age of fourteen years. These, however, are far from realisation under the present policies.

The above provisions are specially mentioned because they deal with what the Constitution requires to be done for children. These are only preludes to the national policy adopted later. There are other provisions in the Constitution dealing with the weaker sections, the backward classes. the scheduled castes and the scheduled tribes. These also have a bearing upon the national policy for child development. What was implied by way of ends and means of development was brought out in the five year development plans of the Planning Commission. The chapters in the five year plans on general objectives and strategy as well as on social services and social welfare make detailed statements and allocate resources for child development. Since its establishment in August, 1953, the Central Social Welfare Board also has been encouraging through voluntary organisations several development programmes for women and children. Since 1964 the Social Welfare Department of the Union Government has been reviewing and formulating policies for women and children along with others. Many committees and commissions have reviewed the policies and problems affecting children during the last three decades. There have been many experiments in programmes and in grants-in-aid to voluntary institutions for child welfare. Laws have been enacted to give effect to the stated policies concerning children. Details about these are not given due to limitation of space. The climax, however, was reached in August, 1974 when a policy resolution for children was adopted by the Government of India and tabled in the two Houses of Parliament at the Centre. The two Houses discussed and adopted the resolution which today constitutes the national policy for children.

#### THE CHILD POLICY RESOLUTION

The child policy resolution contains a fifteen-point statement. P.N. Luthra, the then Secretary, Department of Social Welfare, writes in an introduction to the pamphlet on national policy for children:

The statement on national policy is intended to serve as a pole-star to guide the official and non-official agencies alike in regard to the direction in which they should move for achieving full and integrated development of our children, who constitute our most valuable asset for posterity.

The policy seeks to provide adequate services to children both before

and after birth and through the period of growth, to ensure their full physical, mental and social development. Further, the state would progressively increase the scope of such services so that within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth. In pursuance of the efforts towards attainment of the objectives, the following fifteen measures have been specified:

- (i) all children to be covered by comprehensive health programme;
- (ii) implementation of nutrition programmes to remove deficiencies in the diet of children;
- (iii) programmes for general improvement of the health, and for the care, nutrition and nutrition-education of expectant and nursing mothers;
- (iv) provide free and compulsory education for all children upto the age of 14; reduce wastage and stagnation in schools, particularly in the case of girls and children of the weaker sections of society; also to take up informal education;
- (v) provide other forms of education to children who are not able to take full advantage of formal school education:
- (vi) promote physical education, games, sports and other types of recreational as well as cultural and scientific activities;
- (vii) with a view to ensure equality of opportunity, provide special assistance to all children belonging to the weaker sections of society both in urban and rural areas;
- (viii) children who are handicapped, delinquent, begging or otherwise in distress to be provided education and other facilities so as to enable them to become useful citizens:
- (ix) children to be protected against neglect, cruelty and exploitation;
- (x) children under 14 to be prohibited from employment in any hazardous occupation or heavy work;
- (xi) provide special treatment, education, rehabilitation and care for the physically handicapped, emotionally disturbed or mentally retarded children;
- (xii) priority in protection for children in times of distress or natural calamity;
- (xiii) identify, encourage and assist gifted children particularly of weaker sections of society;
- (xiv) amend the existing laws so that in all legal disputes, whether between parents or institutions, the interests of children are given paramount consideration:
- (xv) in organising services for children, efforts to be directed so as to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment.

These fifteen measures could be summarised into health, education, employment and nutrition for children, as well as nutrition education for mothers. Normal as well as handicapped children are covered with special attention to children of weaker sections. These also seek to prevent exploitation of the helplessness of children by adults. They also provide for discouraging the employment of children and for encouragement of the talents of gifted children. The first thirteen clauses refer to the satisfaction of the needs of children. The fourteenth seeks to provide protection for the rights of children and the last hopefully looks forward to the satisfaction of the needs of children within the normal family environment in the community instead of institutions. These indeed constitute today's minimum set of goals which require reassessment as further developments take place.

The policy resolution lists the following five priority programmes in different sectors:

(a) preventive and promotive aspects of health;

(b) nutrition for infants and children in the pre-school age as well of nursing and expectant mothers;

(c) maintenance, education and training of orphan and destitute children;

(d) creches and other facilities for the care of children of working or ailing mothers; and

(e) care, education, training and rehabilitation of handicapped children.

Proceeding from these specified measures and priorities, the policy resolution refers, in passing, to what has been done, as well as of expansion in the health, nutrition, education and welfare services for children. Improvements, no doubt, have been taking place in the living conditions of children consequent upon developments achieved during the last two and half decades. The policy resolution, however, mentions the need for 'a focus and a forum for planning and review, and proper coordination of the multiplicity of services striving to meet the needs of children'. In order to provide this focus and to ensure at different levels continuous planning, review and coordination of all the essential services, a National Children's Board at the Union Government level and similar boards at the State Government level are to be constituted. The state would endeavour to encourage and strengthen voluntary organisations. The state would also provide necessary legislative and administrative support to achieve the objectives.

Finally, the policy resolution expresses the trust and faith of the Govern-

ment of India that:

the policy enunciated in this statement will receive the support and cooperation of all sections of the people and organisations working for children.

The Government of India also calls upon the citizens, State Govern-

ments, local bodies, educational institutions and voluntary organisations to play their part in the overall effort to attain these objectives.

This, in brief, is the content of the national policy for children enunciated in Government Resolution No. F. 1-14/74-CDD dated August 22, 1974 which was tabled in both the Houses of Parliament on August 26, 1974. The National Children's Board was constituted under Government Resolution No. F. 1-14/74-CDD dated December 3, 1974.

In 1975, as a consequence of the national policy for children, the Government of India have sanctioned the integrated child development services (ICDS) scheme which is to be introduced on an experimental basis in the first instance. Thirty experimental projects were initially located in thirty different blocks in different parts of the country. These have been increased to a hundred recently. Each project aims at the delivery of a package of services (supplementary nutrition, immunisation, health check up, referral services, health and nutrition education, and non-formal pre-school education) in an integrated manner to pre-school children, expectant and nursing mothers, and women in the age group of 15-44 years. More details about the working of the National Children's Board and the ICDS scheme are not given as these might be discussed in other essays.

India is among the first few countries that have adopted a national policy for children besides having a population policy, an education policy, and a health policy. It is not known why the reference to the limitation of the family size has not been incorporated in the policy for children whereas the education and health aspects affecting children are incorporated in the national policy for children. An integrated child development scheme has been formulated and is being implemented. Students of public administration would be interested to know whether these satisfy the policy requirements or whether some thing more remains to be done. This leads us to consider and discuss as to what policy means and what policy requirements are.

The term 'policy' and 'public policy' are ambiguous and controversial. Chester Bernard seems to have said once that he never used the word 'policy' if he could dispense with it without being pedantic because its meanings are so numerous. A few usages of the term policy are: (i) a general rule of action; (ii) a general statement of purpose or objectives but not a rule of action; (iii) a statement which is not a rule of action within an enterprise but propaganda to induce some one outside it to act or not to act in a particular way. The term policy is also understood to mean practice, procedure, course of action, mode of management, line of conduct, system, programme, routine, habit, custom, rule, behaviour, way, method, principle, style, plan, scheme, strategy tactics, design, etc.

A more popular usage of public policy relates to what governments choose to do or not to do, for example, the prohibition policy. In the discipline of public administration, policy is understood to mean a long series of

more or less interrelated activities. Carl Friedrich combines most of the above disparate elements when he defines public policy as,

...a proposed course of action of a person, group, or government within a given environment providing obstacles and opportunities which the policy was proposed to utilize and overcome in an effort to reach a goal or realize an objective or purpose.

According to him, policy should also refer to what is actually done rather than what is proposed in the way of action on a given matter.

No more need be said on the term policy. Those given above should help us to understand policy as a process of relating the means to the ends with devices for reviewing either one or both in the light of experience. Policy is a dynamic process of establishing goals, mobilisation of institutions, resources and personnel for achieving the goals, as well as, subjecting both means and ends to periodic review and revision. There is a policy-administration continuum as well as a continuum in action at different levels of government and community.

Viewed in the above light, does the national policy resolution for children satisfy the policy requirements? One could affirmatively say that the resolution satisfies policy requirements. An accredited statement discussed and adopted by the two Houses of legislature with an integrated programme implemented by the State Governments puts the seal of policy and satisfies to a limited extent the policy-administration continuum. Provision for evaluation is also made. The Programme Evaluation Organisation of the Planning Commission is charged with the task of conducting bench mark surveys in the project areas and undertake evaluation of these projects after these have been in operation for an year or two. The Administrative Reforms Commission set up by the Government of India had recommended that departments and organisations in direct charge of development programmes should introduce performance budgeting. The Andhra Pradesh Government had since then followed the suggestion and in 1978-79 the State Government had submitted a performance budget of the department of woman and child welfare. Other State Governments must be doing the same. The National Children's Board as well as the children's boards at the State level were established and they must be reviewing, coordinating and taking other necessary steps for implementing the policy resolution for children.

#### LACUNA IN POLICY IMPLEMENTATION

The foregoing account should have normally completed the essay but a few important questions require discussion on account of India's vastness in size and the diversities in sub-national cultures. These are well known. In

<sup>1</sup>Janes E. Anderson, *Public Policy Making*, Preger Publishers, New York, 1975, pp. 2-6.

the federal republic of India, the Government of India plays a coordinating role. It may initiate policies but in respect of matters under State jurisdiction in the seventh schedule of the Constitution the State and local governments should act as staff as well as line agencies. We, however, find the Union Government playing a leading staff role and the State Governments are following the lead given by the Union Government rather than take a leadership role on themselves. The ICDS is a Centrally financed scheme. To give a purpose and a direction to the state efforts, the Government of India also prepared a national plan of action for the International Year of the Child. The plan provides for both advocacy and action. The national plan of action was finalised in the meetings of the National Children's Board. The Department of Social Welfare of the Government of India published a blue print for action in September 1978 with a detailed statement of roles and responsibilities for action of various departments, organisations and agencies. The department of woman and child welfare of Andhra Pradesh Government under directions from the Union Government held a workshop in 1978 on IYC. The workshop made several recommendations under the heads of medicine and health, nutrition, social and legal aspects and education. So also the State Government of Karnataka too held a workshop in 1979. No exception need be taken in respect of the dominant and leading role of the Union Government. In every federal polity this has been happening. But we would like to see a greater initiative on the part of the State Governments in matters under their jurisdiction. This is necessary for identifying the peculiar local requirements and for associating the local leaders and for mobilising the community resources at the ground level.

In pursuance of the national policy for children, the Andhra Pradesh Children Board was constituted in 1975. In September, 1978, district and block level children boards were constituted. The district collector is the president of the district level board. The presidents of panchayat samitis or the special officers are the chairmen of the block level children boards. The woman and child welfare department is in charge of the integrated child development services in the State. These boards at different levels were to help in the implementation of the schemes coming from the Centre. What roles are these bodies playing in actual practice is hard to assess because information is scanty, sporadic and inaccessible.

Other State Governments might have been acting upon the directives of the Government of India. The IYC has highlighted the child's place in national development and accelerated the child development programmes. There is multiplication of numbers, diversification of programmes, coordination of agencies and stimulation of awareness, advocacy and action for promoting the welfare of the normal, the handicapped and the deprived children. Do these, however, fulfil the continuum requirement between policy and action and between state and the community? In my view, the continuum is superficial, as funds and directions flow from the Centre.

The relevant questions on policy for children are: (i) is a national policy enough?; (ii) would the States have adopted a policy for children if the Government of India had not taken the initiative?; (iii) even now, could the States supplement the national policy with resolutions on their local policies?; (iv) are the accelerated steps taken under the spur of the IYC likely to be sustained and continued to encourage the efforts after the year is over?; (v) apart from the multiplication and intensification of the existing programmes for the care of the child and the mother, could something more be done, for example, in respect of preventive programmes, people's participation in the policy formulation and in greater effectiveness in implementation? The relevance of these questions becomes evident in the light of the following observations by high level personnel in and outside the Government. For example, M.M. Rajendran, Joint Secretary in the Department of Social Welfare, Government of India, writes,

I would like to mention but briefly the shortcomings of the programme and the directions in which improvements are possible. The enthusiasm among the villagers has not yet been channelised to achieve sustained involvement of the community. At the grassroot level, the anganwadi worker has to shoulder all the responsibility for implementation though it had been originally envisaged that gradually village level voluntary organisations should be able to take over the functions of the anganwadi workers. It is necessary to make it a people's programme so that the village community can take over the responsibility for many of the functions. An important fact that has come to light is the difficulty in reaching the children below three who are really the most vulnerable section among the children. There are various reasons for this but it is necessary to evolve a suitable strategy for reaching these children, as investment of resources on them is even more rewarding than children in the higher age group.<sup>2</sup>

C. Subramaniam, the former Finance Minister in the Government of India, writes about the complex nature of attempts to reach the children. He says:

Giving high priority to children's welfare means singling out a target group which is intermingled with the rest of the population right down to the level of individual families. Therefore it requires building up an organisation and an administrative set-up that goes all the way from international agencies to each village and town of less developed countries.<sup>3</sup>

3C. Subramaniam, "A World Charter for Children", The Hindu, 28th September, 1978.

<sup>&</sup>lt;sup>2</sup>M.M. Rajendran, "Integrated Approach to Child Development", Swast Hind, 1978 (The Rights of the Child, Special Number), p. 294, Central Health Education Bureau, New Delhi.

He speaks of research into the needs of children and one important area of research is how best the locally available food materials can be used to provide an adequate type of nutrition. This research also requires the build up of the human and physical resources to start the programme. Subramaniam's emphasis is upon local initiative and local community action. Lakdawala, the Deputy Chairman of the Pianning Commission wrote:

An additional growth factor is area planning at the district and block level. While this is a part and parcel of the wider reform of decentralisation and brings the advantages of local participation, local supervision, local insights and additional resource mobilisation from the economic point, there will be an additional considerable benefit.

Hitherto, problems have been looked at from the macro-viewpoint, largely Central, partly State and in one or two States very recently from the district viewpoint. The emphasis on district and block level planning will mean a better assessment of the natural land manpower resources and of local potential. While certain major decisions will continue to be taken at the Central and State level, their impact on the local economy can be assessed and the utmost advantage can be taken of Central and State Programmes at the local level. To the extent decisions are taken by lower authorities or local initiatives, they can be so adjusted as to lead to the optimum exploitation of natural resources and best use of local manpower.<sup>4</sup>

Indeed Lakdawala, has, in a way, answered the suggestion by C. Subramaniam about organisational requirements for community participation at the grassroots level. Further more, Lakdawala refers to additional areas for research when he says:

With the shift to decentralisation and weaker sectors, our hopes essentially like with the way unorganised sectors respond to the new opportunities and consciousness they imbibe of the likely problems, difficulties and dangers. And yet our lines of communication with them has to be established, and an understanding arrived at. It is only on the fulfilment of this condition that the growth forces can work powerfully and speedily.<sup>5</sup>

#### COMMUNITY AND PARENTAL AWARENESS

Advocacy, awareness and action by government and community constiute the quintessence of approach during the IYC. To these must be added

<sup>&</sup>lt;sup>4</sup>T. Lakdawala, "Draft Five Year Plan 1978-83—Forces of Growth", Yojana, 18th May 179, Vol. XXIII/8, pp. 5-14.

<sup>5</sup>Ibid., p. 14.

the stimulation of the awareness of parents and fellow members in the family, not only during one year but in the years to come and in the future.

The need to stimulate community and parental awareness is advocated but we are in the dark as to how to stimulate it. In the specific sphere of health, B. Sankaran, Director General of Health Services, Government of India, writes:

The idea of people's participation as far as health service (sic) are concerned have not been adequately implemented and this vast resource has hardly been tapped to the desired extent. As people's expectations from health services increased, the need for strengthening country's health services was recognised and subsequently the need for enlisting people's active participation assumed great importance.<sup>6</sup>

If enlisting participation in one area of service, namely, health, has been difficult, one could imagine the difficulties of mobilising the cooperation of parents and families for immunisation, nutrition, education of mothers and children under a system of centralised planning and state administration of services for children. The absence of multi-level planning in a meaningful manner and the prevalence of plan delinked from field administration is the Achilles heel of our national policies.

Non-participation by local governments and communities undermines the credibility in the efforts of government and non-government organisations. For example, the promised constitutional provision of education for those under fourteen years in a decade could not be fulfilled even after three decades. The population policy has been facing difficulties in implementation. On top of these comes a recent declaration about promise of state care for every destitute child born during 1979 on or after first of January, 1979, i.e., the International Year of the Child. Implementing this declaration, namely, promising state care of every destitute child, implies an enormous and complex machinery for identification of destitute children and establishing institutions of care and cure for them. Could this be done without mobilising the local community cooperation? The mode and media of mobilising public cooperation for any programme are still far from satisfactory; particularly for destitute children, public cooperation is hard to come by. Hardly any machinery is in evidence for enlisting public support. Welfare rights and discriminating protection are creating an atmosphere of welfare militancy among the eligible but discontented beneficiaries. The beneficiaries are multiplying and these could be reached only if the policies and administration are locally initiated with the support of the local government and community. However, we witness a phenomenon in which citizens are gradually becoming

<sup>&</sup>lt;sup>6</sup>B. Sankaran, "Health Situation in India", Swast Hind, December, 1978, Vol. XXII, No. 12, 1978, p. 308, Central Health Education Bureau, New Delhi.

alienated from local administration and they are getting disillusioned and disappointed about the competence of political parties to satisfy the needs and rights of the 'poor'. Centralised planning and national policies without corresponding counterparts at the State and local levels run counter to the philosophy of sound democracy and decentralised administration. Loss of faith among people in the policy statements of governments erodes gradually the faith in democratic systems.

'Happy Child—A Nation's Pride', 'A Healthy Child—A Sure Future'.
—None could take exception to these soul-lifting slogans about citizens in the offing. But what is the state of the child born today? To quote again B. Sankaran:

What are the problems we face to-day in the management of the child who is born to-day? We know that 35 to 40 per cent of children born in most parts of this country are born with a low birth weight of below 2.5 kgs. The survival of such children is certainly much less than a child born healthy and above 2.5 kgs.<sup>7</sup>

He further states that 42 per cent of our population is below the age of fourteen ... "It is sad to state that in most developing countries three out of four children to-day only survive and one of them dies before the age of five, in comparison to ninety-five per cent survival in most developed countries."

The employment of children below the age of fourteen is very high and there does not seem to be any prospect of its abatement in the near future. According to UNESCO finding in 1976, the per day, per capita expenditure on children's education in India is thirty nine paise whereas it is more than thirteen rupees in Japan. More depressing figures about the deplorable conditions of the indigence, ill-health illiteracy and ill-equipment of the increasing numbers of children born in India could be given. A policy paper need not be cluttered with facts and figures of destitute, delinquent or handicapped children. It is enough to say that the government policies and programmes touch only a fringe of the problem. At the rate and in the manner in which these programmes are being expanded and implemented, we have to run fast in order to stand still. The national policy for children is indeed commendable but it is an isolated statement without relationship to the family and the society in which the child lives. With the present methods of administration by the bureaucracy in which hardly much public participation prevails, we cannot make much headway. There is a pressing need to make the national policy an integral part of family and social policies. These policies need to be communicated, advocated, reinforced, supplemented and acted upon by the state and local governments as well as communities.

<sup>7</sup>B. Sankaran, "A Healthy Child—A Sure Future", Deccan Chronicle, 27th May, 1979, p. 4., Hyderabad.

#### NEED FOR A COMPREHENSIVE SOCIAL POLICY

A child outside home environment is a fish out of water. The provision of an appropriate home environment for each child requires the formulation of a family policy. We have a population policy, health policy, education policy, housing policy, welfare programmes and so on. Do all these converge into a family policy or social policy with capital S and capital P or do we have social policies with small s and small p? Could we formulate a social policy in which the 15th point in the child policy resolution is made effective, making family the focus and forum for child development as well as the starting and dominant force? What are the implications of formulating a social policy? And what is a social policy, any way? Could there be a national policy for children without a family policy which is part of a comprehensive social policy?

The Constitution and the five year plan documents as well as the separate policy statements on population, health education, housing, etc., speak of each sector's contribution to the new social order based on justice, liberty, equality and fraternity. No attempt, however, has been made to work out the institutional, personnel and cost implications of pooling these policies together into an integrated social policy. Much less has there been an exercise in making explicit the element implicit in mobilising citizen's participation and community action apart from government departments' slow-moving bureaucratic action. We seem to be suffering from an assumption that all is well when the Centre passes a policy resolution and when it gives directives and finances for the States to follow. This is a suicidal approach to social development.

Social policy is a product of social politics, a term first used in the social science literature by a Munich Professor, Whilhelm Heinrich Richl (1823-1897). Richl considered the loosening of societal bonds rather than economic exploitation as the core problem in the disintegration and reconstruction of society. Social policy, then, comprises both purposive action and practical volition in a social context. The term social policy does not imply the definition of a number of phenomena but, rather, a point of view, an approach to the observation of economic and social phenomena. The point of view proceeds towards the unveiling of the causal connections between economic development and other societal phenomena. A further elaboration of social

10 Ibid., p. 57.

<sup>&</sup>lt;sup>8</sup>Werner, J. Cahnman, and Carl M. Schmitt, "The Concept of Social Policy (Social Politik)", *Journal of Social Policy*, Vol. 8, Part 1, January, 1979, p. 49, Cambridge University Press, London.

<sup>&</sup>lt;sup>9</sup>Also see, Otto Von Zwiedineck Sudenhorst, "Social Policy and its Manifestations—Concept and Substance of Social Policy", Social Policy, Vol. 8, Part 1, p. 53, January, 1979, Cambridge University Press, London.

policy, in terms of politics and legislation is as follows:

The nature of social policy requires a particular characterization which has to do with the ultimate goal of all politics, namely, the tendency to develop legislation that may shape society. The nature of social policy is conditioned, first, by the purpose inherent in all social policies, that is, to promote the interests of a collectivity and, secondly, by the preventive character of social legislation. These two characteristics differentiate social policy from other activities which are related to the ends of social policy but which are separate categories of public action, such as relief for the poor and social welfare.<sup>11</sup>

Just as child development cannot be conceived apart and separated from the family, the national policy for children cannot be effective unless integrated into a comprehensive family policy which again is a part of the larger social policy. Experiments under the national policy for children resulted in the integrated child development scheme. The time has come to experiment with family policy as part of an area planning at the district and block levels. Planning for action has to permeate to the micro-level of families and eligible couples. Parents' awareness and the States' competence to mobilise social action are essential. Human resource development is a more difficult and complex matter than materials management. The most difficult management problem in the national policy for children is to reach the children below three years in the family setting of the people the bulk of whom are below the poverty line. Such efforts require researches into social development techniques, community leadership, group action and mobilisation of human resources. While India has a national policy for children, it lacks the bones and sinews to sustain it because the States and the local government are only following the directives from the Centre. Hardly any initiative outside the Central Government is evident in the field of child welfare. At all levels, there is dependence for finances upon higher level organisations. There is very little evidence of local resource mobilisation. It looks as though the social engineering of to-day is not radically different from the socialisation of the past inspite of the tremendous strides in technology and public administration. Even though it is unfair, and we do not know why it happens, we find that 'in the tread mill world of hopelessness, children seem fated to repeat the ignorance and misery of their parents'.

#### SOME CRUCIAL POLICY ISSUES

Is India's policy for children an expression of earnestness or a mere pious hope. Sceptics point to the shortcomings of many plans and programmes

<sup>&</sup>lt;sup>11</sup>Otto Von Zwiedineck Sudenhorst, op. cit., p. 58.

vis-a-vis the magnitude of the size and the complexity of the problem in satisfying the needs and doing justice according to the declared rights of children. India is not alone in this respect. Julia Henderson has raised some crucial policy issues in a forthright manner. She says:

Governments are likely to make many resounding policy statements but the fulfilment of these plans will constantly be curtailed because of an economic or political crisis, a flood, a plague of locusts or a civil war.<sup>12</sup>

But she is neither cynical nor pessimistic so as to describe IYC as 'sounding brass and tinkling cymbals'. She is sober and modest in her conclusions. She writes:

With such massive numbers of children living in countries where poverty, disease and illiteracy are still the lot of a majority of the population, it is hardly realistic to expect that great improvements in meeting the basic needs of children will take place in the short run.<sup>13</sup>

With special reference to the IYC, she writes:

The IYC is a 'consciousness raising' effort if sufficient pressure can be built up within each country to convince the policy makers of their short-sightedness in wasting the potential of the new generation, it is possible to change some priorities. This is why the role of voluntary citizen groups in the national commissions is so important and the participation of senior political and civil service officials is so vital.<sup>14</sup>

In Europe too, the rights of the child as set out in the UN declaration twenty years ago are not fully realised. Elisabeth Jager has given a brief account of 'Rights in Practice' in Europe. What frustrates an Indian citizen could be illustrated from one example—unsuccessful efforts at providing a home and family care for needy children under the Adoption Bill which was twice attempted to be enacted into a statute but both times failure visited the efforts because of the 'short sightedness' of policy makers mentioned by Julia Henderson. The Bill was introduced several times since 1965 and always it met with opposition and could not be enacted into law.

The general theme of IYC, in India is 'reaching the deprived child'15

<sup>&</sup>lt;sup>12</sup>Julia Henderson, "A Crusade for Children in a Special Report", People, Vol. 5, No. 4, 1978, International Planned Parenthood Federation, London.
<sup>13</sup>Thid.

<sup>14</sup> Ibid.

<sup>&</sup>lt;sup>15</sup>National Plan of Action for International Year of the Child, 1979, Government of India, Ministry of Education and Social Welfare, Department of Social Welfare, New Delhi, September 1978, p. 4.

In the national plan of action, the Government of India declared that IYC should not be construed as a one year programme but should be viewed as a spring board for vigorous and continued action during the residual part of the century. To this end the Government suggested that a perspective plan for the next two decades (1979-99) should be evolved. In the same pamphlet, the Government of India cautiously mentioned:

However, in view of our resource constraints and differential degrees of ecological deprivation, our approach must be endowed with a certain focus and realism.<sup>16</sup>

The idealism of the IYC is pitted against the realism of the resources constraints by the Government of India. The child is a helpless and an inarticulate dependent upon the adult guardians and policy makers. The 'short-sightedness' of policy makers and the negativism of the bureaucrats prevent them from reacting favourably to satisfying the needs of children and protecting their rights. The ignorant and indifferent parents also could not do justice to them without a lobby or a pressure group for awakening the consciousness and to advocate the cause of the helpless and to protect the rights of the undefended. Where do we seek leaders to launch a movement for promoting the welfare of the normal or destitute, deprived, disabled or helpless children?

Students of policy sciences and policy researchers should pose heart searching questions to policy makers and prompt them to look beyond the next election and also to help in promoting the interests of the next generation—not by words alone but by action in the field at each family level. This becomes possible only when the national policy is supplemented and reinforced by declarations of state policy and community action. These together should form the 'sub-national' policy for children.

<sup>&</sup>lt;sup>16</sup>National Plan of Action for International Year of the Child, 1979, op. cit.

## Priority Needs of Children in India

### Meenakshi Apte

THE NATIONAL policy for children adopted in 1974 by the Indian Parliament declares children as a 'supremely important asset' and emphasises the need to provide adequate services to children both before and after birth and through the period of growth. Thus the policy takes into account the general health and education needs of all children and also gives attention to the needs of children belonging to some of the disadvantaged groups on priority basis. In this paper some of the most important needs of children are covered. The paper also raises some issues which are important so far as children's needs are concerned.

### POPULATION PROJECTIONS

In 1975, J.P. Ambannawar published his own set of projections up to 2051. Other sets of projections have been published by Caseen and Dayson and by the Expert Committee appointed by the Planning Commission. Ambannawar's figures were predicted in 1974, before the intensification of the sterilisation movement in and during 1975-77 and the slackening of it after 1977 March. Ambannawar's figures do give a fair idea of the dimensions of the increase in the population of children alone between 1981 and 1991.

From Table 1 it will be observed that at the beginning of the decade the child population is going to be 39.53 per cent, there is general reduction during the decade and at the end of the decade it will be reduced to 36.77 per cent. However, it is also expected that there will be a net increase of child population. By the end of 1990, the expected total population will be 800 million, 36.77 of which is estimated to be child population which comes to approximately 280 million.

From the projections above it is to be noted that the States of Kerala, Maharashtra, Tamil Nadu and Punjab are showing considerable decline. Rajasthan, Assam, U.P. and Karnataka are much above the national average, others are on par with the national average. If we accept that fertility is more closely associated in an inverse fashion than mortality with socioeconomic status, then we must accept that the proportion of child population in the weaker sections of the population is significantly higher than in the

Dependency load 0-14 75.5 71.9 68.1 64.1 Percentage distribution 41.58 38.18 36.77 39.53 0-14 40.77 1,075 1,079 1,082 1,082 1,081 M/F X 100 TABLE 1 PROJECTED CHILD POPULATION BY AGE-GROUP 0-14 31,211 35,395 39,619 42,064 45,479 10-14 49,560 41,852 46,022 34,354 MaleFemale 49,449 40,302 36,117 42,661 46,011 5-9 42,354 43,469 39,180 46,489 49,968 Male Female 44,819 51,036 .53,513 47,863 4 48,104 54,617 57,148 44,207 51,341 Male Year 1976 1986 1971 1991 1981

SOURCE: Ambannawar quoted by Ashok Mitra, 1979.

general population. This indicates that the problem of child dependency is more serious in these classes with regard to the state level projections it would be seen that the growth rate of the total population for 1971-91 varies from only 27 per cent for Tamil Nadu to 60 per cent in Madhya Pradesh 61 per cent in Rajasthan and 83 per cent in Assam. The situation that is reflected in Tables 1 and 2 regarding the child population in the next decade is quite serious and needs realistic approaches in development planning and population control policies. The economic developments in the first 30 years have underplayed the role of social development.

TABLE 2 GROWTH AND PROJECTION OF TOTAL CHILD POPULATION BY STATES

	1971 per cent	1991 per cent
Andhra Pradesh	40.48	32.09
Assam	46.60	41.96
Bihar	42.58	34.08
Gujarat	43.05	35.70
Jammu & Kashmir	42.88	, N.A.
Kerala	40.26	30.26
Madhya Pradesh	43.70	36.91
Maharashtra	41.34	31.74
Karnataka	41.13	43.11
Orissa	42.35	33.81
Punjab	43.30	32.58
Rajasthan	44.17	39.86
Tamil Nadu	37.77	30.36
Uttar Pradesh	41.85	37.19
West Bengal	41.90	37.66
India	42.02	34.28

Source: Ambannawar, 1975.

#### CHILD WELFARE NEEDS

We have seen the estimates of child population during the next decade. This paper is made to visualise child welfare needs for the age groups 0-6, 6-11 and 11-14. It is not possible to cover all needs, most of the important needs are covered.

### Maternal and Child Care Services

The objective of maternal and child health (MCH) services begin with the immediate health problems of mother and children and extend to health throughout life and to community health. The specific objectives of MCH are reduction of maternal pre-natal, infant and childhood mortality and morbidity and the promotion of reproductive health and the physical and psychosocial health of mothers and children. The principles underlying the

## MCH programmes are:

- 1. MCH services are one item in the package of services provided to the community through the health organisations such as primary health units, hospitals, etc.
- 2. Has a component of domiciliary services.
- 3. Family planning services are integrated with MCH programmes.
- 4. Traditional birth attendants are utilised.
- 5. Local self-government and voluntary organisations are involved.

The maternal and child health services have developed on many fronts. A review of the literature on the development would indicate that considerable efforts have been made to develop. MCH services. In the First Five Year Plan, there were two major developments, one in the field of rural development blocks and the other in the formation of the Central Social Welfare Board to strengthen the field of social work amongst women and children. In the beginning it was fully realised that the lack of trained personnel such as women doctors, health visitors, midwives, etc., were an important handicap in providing effective services and hence the number of training centres were started to overcome these difficulties. MCH programmes were covered under child development programmes from the Second Plan period and since then the MCH services have become an integrated part of the total health programmes and their development is linked with the expansion of primary health centres. Effort was made to provide modern and scientific midwifery services to the mothers in both rural and urban areas. In the big cities the demand for maternity beds increased considerably as about 90 per cent of the deliveries took place in institutions. Paediatrics was recognised as the weakest link in the existing maternal and child health services and only 29 medical colleges had paediatric departments. During the Third Plan period along with MCH, health education and nutrition was given consideration as part of public health services. As a vulnerable group of the population, the pregnant mothers, the nursing mothers, infants and the school-going children were given special priority.

Demonstration child welfare pilot projects and family and child welfare projects were introduced along with their expansion. Primary health units in rural areas and maternal child health centres in urban areas were expanded. In the Fourth Plan, MCH services were integrated with family planning services. During the first fifteen years of health planning, the emphasis of health programmes was on: (i) control of communicable diseases; (ii) promotive, curative, preventive, and promotional services in the rural areas through PHC; (iii) expanded training facilities. In the Fifth Plan the primary objective was to provide minimum public health facilities integrated with family planning and nutritional services for vulnerable groups such as children, pregnant mothers and lactating mothers. The minimum needs programme was given

the highest priority.

Immunisation: Table 3 gives the financial outlays for the year 1979-80. It will be noted that compared to the total, the number covered is low taking into account the 130 million children who are added each year. With the setback of family planning (family welfare) programme, it is expected that the number will be still larger. Data shows that there are 5,400 primary health units covering 17,646 PHU sub-centres and 20,489 family welfare sub-centres. In addition, there are 5,780 institutions involved in maternal and child health work. One thing is sure that these centres have helped in creating a network of MCH services in the villages. It is expected that one sub-centre covers approximately 10,000 population. The staff provided at these Centres is too inadequate to reach out to all the expectant mothers, often pre- and post-natal services to them. While considering the needs of children in the future, we will have to bear this fact in mind, that more financial outlays, increase in the number of primary health units and provision of more staff would be necessary.

### Infant Mortality

Rural India is very much underdeveloped both economically and socially.

TABLE 3 MCH SCHEME—FINANCIAL OUTLAYS AND PHYSICAL TARGETS

	19	79-80	· ·	VI Plan
Scheme	Financial outlays (Rs. in lakhs)	Physical targets (Beneficia- ries in million)	Financial outlays (Rs. in lakhs)	Physical targets (Beneficia- ries in million)
A. Immunisation				
Tetanus toxoid for expectant				
mothers	29.00	6.00	3034.00*	35.0
Small pox vaccination	30.00	32.0		
B.C.G. vaccination	50.00	13.0		
Triple (DPT) vaccination	60.00	12.0		72.0
Primary & Booster Biralent				
(DT) vaccination	122.00	20.0		65.0
Typhoid vaccination	4.00	5.0		
Measles vaccination	10.00	0.2		3.4
B. Prophylaxis against Nutritional Anaemia				
Mothers	88.00	11.0		60.0
Children	66.0	11.0		60.0
C. Prophylaxis against Vitamin 'A'				
Deficiency	95.00	25.0		125.0
D. Training of Traditional				
birth-attendance	38.00	0.1		

NOTE: \*Total outlay

Source: India Year Book 1977-78, Government of India.

The general health of the mother, proper care during pregnancy and child birth, and correct feeding and sanitary care of the baby are the most important determinants of the chances of survival of the new-born baby. Those factors are dependent upon the capacity of the community to provide proper facilities and the ability of the families to make use of these facilities. It has been observed that developed countries, where the infant mortality rate (IMR) is low, are equipped with adequate medical facilities. Higher per capita expenditure on medical and public health facilities is associated with lower rate of infant mortality.

Table 4 will show that in the States of Assam, Rajasthan and U.P. the per capita expenditure on medical care is very low. It is observed that centrally administered territories have a higher per capita expenditure on health both in the urban metropolitan areas of Delhi and Chandigarh as well as the

TABLE 4 PER CAPITA EXPENDITURE ON HEALTH IN STATES (1970-71)

Sr. No.	States   Union Territories	1966-67	1970-71	Number of beds on 1000 persons	Doctor to
1.	India	3.93	6.21	0.51	N.A.
2.	Andhra Pradesh	3.71	6.02	0.65	4416
3.	Assam	4.00	5.11	0.47	2631
4.	Bihar	1.93	2.92	0.20	6063
5.	Gujarat	4.82	7.67	0.56	4900
6.	Haryana	1.30	7.50	0.54	6702
7.	Himachal Pradesh	5.21	11.69	0.95	9026
8.	Jammu & Kashmir	7.32	10.29	1.58	1810
9.	Karnataka	3.25	5.53	0.81	5300
10.	Kerala	5.20	7.18	0.90	3981
11.	Madhya Pradesh	3.10	4.87	0.33	21663
12.	Maharashtra	4.41	7.58	0.74	2592
13.	Manipur	4.85	10.37	0.67	7171
14.	Nagaland	15.32	35.02	1.72	5327
15.	Orissa	3.28	4.99	0.41	7008
16.	Punjab	5.40	7.38	0.60	5863
17.	Rajasthan	4.00	6.00	0.53	12662
18.	Tamil Nadu	4.53	8.99	0.55	3511
19.	Tripura	6.39	N.A.	0.58	7486
20.	Uttar Pradesh	2.26	3.23	0.40	7672
21.	West Bengal Union Territories	4.27	6.12	0.78	1747
22.	Goa Daman Diu	14.72	23.06	2.48	1366
23.	Pondicherry	14.48	23.71	2.33	N.A.
24.	Andaman Islands			4.52	3343
25.	Arunachal Pradesh			1.00	3200
26.	Delhi			2.40	N.A.
27.	Chandigarh			3.64	420

Sources: 1. Health Statistics of India, 1971.

<sup>2.</sup> Handbook of Social Welfare Statistics.

tribal areas of Andaman and Nicobar Islands, etc. Surprisingly of all the States in India, Nagaland has the highest per capita expenditure. Table 5 shows the Statewise IMR.

TABLE 5 INFANT MORTALITY IN INDIA—STATEWISE 1975

		Ri	ıral	U	ban
State	IMR	Male	Female	Male	Female
Andhra Pradesh	113.6	136.6	107.3	88.8	68.0
Assam (including Meghalaya)	126.3	142.3	134.3	91.1	64.1
Bihar	101.0	102.2	110.2	110.9	85.2
Gujarat	153.6	160.8	157.5	128.2	133.8
Haryana	78.0	73.7	92.0	59.0	64.1
Himachal Pradesh	136.0	185.0	120.2	81.0	68.6
Jammu & Kashmir	83.4	100.7	84.5	70.8	15.3
Karnataka	95.4	105.1	96.9	83.3	62.1
Kerala	52.7	59.2	52.5	41.5	37.9
Madhya Pradesh	144.0	161.0	141.8	114.9	111.9
Maharashtra	98.9	107.5	97.1	88.4	80.0
Orissa	132.5	144.7	134.9	108.7	97.4
Punjab	100.3	98.1	110.0	96.8	75.3
Rajasthan	139.7	144.1	153.2	106.8	101.9
Tamil Nadu	125.1	136.1	131.4	111.8	67.2
Uttar Pradesh	154.4	158.8	172.4	109.5	110.9
West Bengal	102.9	115.4	111.2	57.6	64.7
India	127.1	138.1	134.5	94.2	85.1

Source: Sample Registration Bulletin, Vol. IX, No. 4, October 1975.

The age at marriage, levels of literacy and urbanisation have also played an important role in the level of infant mortality. The mean age at marriage (for females) has increased from 13.7 to about 16 years in the last 5 decades. In Kerala and Tamil Nadu where the mean age is 18.4 IMR is low.

Education is one of the most important factors affecting IMR. Mothers with a higher level of education have experienced lower infant mortality rate. In India the higher educational level of mothers is also associated with high class, high caste, upper status. Income of the parents plays an important role in controlling infant mortality. The facilities available to the community can be purchased by parents who can afford. Urbanisation and industrialisation influence IMR. The population in urban area has better sanitation, health facilities, access to education, better opportunities for employment, etc. Antenatal and post-natal services are still very inadequate in rural areas inspite of the existence of over 5,000 primary health units in the country.

There is also sex differential in the IMR. It is observed that females have a lower IMR as compared to males at the national and State levels. But they suffer a major setback due to social neglect in the next age group.

IMR is found to vary with the order of birth, a biological factor. Higher mortality is found among the first birth and again at the higher order of birth. Children born in multiple birth face a greater risk of mortality than those born in single births. Since the mother's age at first birth is very low, infants are at greater risk. We cannot hope that conditions in the 80s would be drastically different and hence a great deal of work would be needed in making an effort to bring down the birth rate itself, and bring down IMR by using such measures as raising the age of marriage, raising the educational levels of women, providing medical services with qualitative as well as quantitative improvements.

### Malnutrition Among Children

Nutrition plays a significant role in the physical, mental and emotional development of a child. Malnutrition and undernutrition retard the growth and development of a child. Several studies have been carried out on infants, pre-school children, reporting dietary intake, body weight and height and clinical symptoms associated with nutritional deficiencies. A few major studies are: (i) a large scale survey covering 5,000 children from poor socioeconomic households conducted in South India during the late 50s; (ii) ICMR surveys in the 60s at six different centres in India covering both rural and urban area. The data from (i) and (ii) have been reported in the diet atlas of India (NIN, 1974) M.S. Swaminathan has recently reviewed the evidence from these surveys to assess the nutrition status in infants and children.

Maternal Nutrition: Since the mother has to nurture the foetus her nutrition has a direct relationship with birth weight. Several surveys have shown that most mothers are underweight (weighing less than 50 kg.), and have a calorie deficit of 500-600 calories a day. Anaemia is common, and about 50 per cent of women have a haemoglobin level of less than 10g. per cent during the third trimster. Anaemia is mainly due to iron and folic deficiency. Thirty to forty per cent of women show evidence of vitamin 'A' deficiency. Diets of pregnant and nursing mothers are frequently grossly deficient in protective foods like milk, pulses, leafy vegetables and even in staple cereals. The diets are deficient in calories, proteins and several other nutrients. The weight gain during pregnancy is much less than that found in developed countries. Even though the foetus can take from the mother, it still seems to suffer from the effects of maternal malnutrition and has low birth weight.

The dietary intakes of lactating mothers belonging to the poor income groups are far below than those recommended. The result of insufficiency in breast milk is seen in the form of inadequate weight gain of the baby after the fourth month.

Infants: In general, prolonged breast feeding is the rule in all regions. During the first six months a child depends totally on breast feeding and shows some increase in weight. After this there is a fall in breast feeding.

Pregnancy is the most common cause for the discontinuation of breast feeding.

Pre-school Children: As in the case of infants, in assessing the nutrition status of pre-school and school-going children Gopalan compares the calorie and protein content of the diet of pre-school and school-going children.

It is a fact that as income increases the energy intake increases. Large number of children are malnourished or undernourished because of poverty. It was believed that as gross national product increased, the gains of development will find their way to the poor. This expectation has not come true. Along with poverty, even feeding habits need to be reviewed. In poor families supplementary foods are introduced quite late. Invariably they consist of adult diets. Knowledge of cheaper supplements is lacking. Poor people have poor knowledge about the relationship between food, health, and nutrition. Surveys carried out by NNMB in 9 out of 15 major States in 1976 covering the poorer sections of society indicates.

It is thus clear that the diet of the pre-school child is unbalanced. It has been pointed out by eminent scholars that nutritional deficiencies lead to the aggravation of many other diseases, unfavourably affect productivity and contribute to overall mortality associated with malnutrition.

Data show that diarrhoea, cough, fevers and other unspecified diseases are important causes of high infant mortality in rural area. Potable drinking water, better health and sanitation facilities, better housing, general standard of food intake are all related factors, the lack of which increases the susceptibility of children to diseases, and results in high mortality.

## Primary Education

There is rapid expansion in the field of primary education since independence. In 1960-61, approximately 19.15 million students were enrolled in primary classes. During the decade 1961-71 about 22.5 million additional children were on the rolls of classes I-V. During the period 1951-56, the annual rate of increase in the enrolment of primary classes was 6.28 per cent and showed a gradual increase of 8.85 per cent up to 1966 and a sudden fall was noted in 66-71. The annual rate of growth of enrolment in primary education during the period 1966-71 was lower than the annual rate of growth of the population. The rate of increase in the percentage of girls enrolled in primary classes was more than boys throughout the period. A steep increase was noted between the years 1961-66 (boys 7.28 per cent, girls 12.09 per cent). Enrolment ratio is computed on the total number of students who are enrolling in primary classes 1-5 to the population in the age group 6-11. Enrolment ratio increased for boys from 60.8 in 1961 to 95.5 in 1971. At both primary and middle school levels there is increase in the enrolment of boys and girls during the period 1966-71 (boys 46.3, girls 19.9).

There are State level variations in the enrolment in education. Kerala and Centrally Administered States show very good progress whereas Rajasthan,

Bihar, U.P., Assam, Madhya Pradesh and Orissa, are far behind. There is also Statewise variation in the enrolment of boys and girls. Secondly in rural areas the education of girls suffers most because of the high dropout rate amongst them. We do not have caste-wise rates of school dropouts but both boys and girls from low caste, low class, low income groups dropout from the school even before they reach the status of the literate, i.e., 4th standard. The school dropout rate is as high as 63.1 per cent at primary level and 85 per cent at middle school level. It is shocking to observe that approximately 10 million students were 'wasted' during the year 1965-66. Stagnation and failures are also responsible for wastage in education. There are various reasons for the wastage and stagnation, mainly socio-economic. Poverty, lack of interest in schooling, the long period of education, the non-vocational bias in education, stress on learning of languages, boring syllabi, shortage of teachers, early marriages of girls, demand for earning are all said to be the reasons for the wastage. In spite of high expenditure on education the country still continues to have a large number of illiterate children whose number is increasing year by year.

There are certain assumptions for primary education. It is assumed that for boys the present enrolment ratio of 95 would gradually increase to 100 by 1991. For girls, the ratio would be 93 per cent (Tables 6 and 7).

It is expected that there will be 43.70 million boys and 30.32 million girls at primary level and 7.96 million boys and 1.7 million girls at middle school. It seems extremely difficult to provide compulsory education for all children in the age group 6-13 in the near future. The national education policy is however very ambitious. By the end of 1990, the Government expects to attain 100 per cent adult literacy. Schemes of functional literacy, continuing education, adult education, etc., are being launched since 1978. One does not know, with such high dropout rate in formal schools, how we are going to attain complete literacy through *informal* education which has to develop its methodology of teaching and the curricula to be taught. It would be better to have realistic plans about education.

Vocational Education: As children grow they need a type of education which will equip them for earning their bread. As it looks, it is difficult to cover all primary schools with facilities for vocational training. We have the Apprenticeship Training Act in our country. But there is no machinery to implement this Act in the education department. The machinery attached to the labour department is very weak. A strong machinery which will notify and will systematically recruit the candidates for training is needed. Today it is left to the individual industry to implement the scheme. It is necessary to create such a machinery which will review the position from time to time, recruit the candidates and will do the placement.

Pre-school Education: Pre-school education is yet not a state responsibility. Hence it is considered as a welfare activity. However, for the last 40 years the pre-school movement is growing with the starting of welfare

TABLE 6 PROJECTED SCHOOL POPULATION FOR INDIA 1971-91

400		1976			1981			1986			1991	
groups	Total	Male	Female									
5	17,580	8,975	8,605	18,088	9,313	8,774	18,245	9,362	8.883	18,354	9.442	8 912
6-10	83,787	42,471	40,315	87,507	45,030	42,477	89,549	46.078	43,471	90.366	46 510	43 856
[-13	45,003	23,365	21,638	49,625	25,490	24,135	52,174	26,964	25.210	53.299	27.457	75.847
14-16	40,808	21,249	19,559	46,461	24,033	22,428	50,336	25,929	24,407	52,314	27.028	25.286

SOURCE: Registrar General of India, New Expert Group Committee, Population Projections I (Mimeographed)

Table 7 PERCENTAGE GROWTH IN PRIMARY AND MIDDLE SCHOOL EDUCATION 1976-91

					`\							7	IVI lata te			
		Be	Boys			0	Girls		l	I	Boys		}	9	Girls	
	Below 6	6-10	6-10 11+	Enrol- ment	_	Below 6-10 11+	<del> </del>	Enrol- ment	Below 11	11-13 13+	13+	Enrol- ment	Below 11	11-13	11-13 13+	Enrol- ment
1975-76 1980-81 1985-86 1990-91	8.21 6.86 5.93 5.00	78.90 83.30 86.65 90.00	9.65 7.84 6.42 5.00 J	96.76 98.00 99.00 100.00	4.90 3.75 4.20 4.65	57.65 67.50 75.60 83.70	5.21 3.75 4.20 4.65	67.76 75.00 84.00 93.00	6.12 6.10 6.70 7.30	350.5 42.70 52.55 58.40	12.40 12.20 9.75 7.30	350.5 12.40 53.57 42.70 12.20 61.00 52.55 9.75 67.00 58.40 7.30 73.00	3.20 3.70 4.95 6.20	19.00 25.90 37.75 49.60	6.30 7.40 6.80 6.20	

SOURCE: Registrar General of India New Expert Group Committee. Population Projections I (Mimeo.)

extension projects, community development programmes and family and child welfare projects. A large number of balwadis have come up in the rural, tribal and urban slums. The wide spread wastage and stagnation in primary schools is one of the indications of the need for pre-school education. A recent study indicates that there is no need to have expensive equipment for a pre-school centre. Table 8 gives the total number of beneficiaries covered under nursery schools as well as balwadis run by the Central Social Welfare Board, Indian Council for Child Welfare, Adim Jati Sevak Sangh, etc. Taking into account the total number of children of pre-school age, even a fringe of the problem is not touched. An important aspect of the clientele who go to pre-schools is that it is mostly from better educated, higher caste and large farmer families rather than from the less educated, lower class, landless agricultural labour. Tribal children do not have pre-school facilities because they live in remote, interior areas of the country.

TABLE 8 NUMBER OF BENEFICIARIES AND EXPENDITURE INCURRED UNDER NUTRITION FEEDING PROGRAMME IN BALWADIS IN 1974-75

		Rur	al areas	Urba	n areas
No	ame of Organisation	Benefi- ciaries	Expenditure (Rs. lakhs)	Benefi- ciaries	Expenditure (Rs. lakhs)
1.	Central Social Welfare Board	1,03,791	50.47	61,611	29.98
2.	Indian Council for Child Welfare	32,117	24.31		
3.	Bharatiya Adimjati Sevak Sangh	10,261	9.15		
4.	Harijan Sevak Sangh	6,849	4.75	16,630	6.14

Source: Handbook of Social Welfare Statistics.

Table 9 shows the total number of boys and girls attending pre-primary school. Taking in to account the total number of children in this age-group the coverage is low. In U.P. and Bihar, it seems that the number of institutions and the number of beneficiaries are both low.

Balwadi can become a good base for child welfare activities and their number could be increased.

Juvenile Delinquency: Young persons in conflict with the law present the problem of individual and family disorganisation. At a young age when the individual should be achieving an increased awareness of the importance of accepting the common ethical values, as incorporated in our laws and codes of behaviour, most children have problems or difficulties in connection with growing up. But children who are called juvenile delinquents are victims of bad bringing up. So far in the earlier part of the paper we have seen that children suffer from malnutrition, poverty, lack of education, etc. There are so many inadequacies in their lives, with the development of the city and the consequent shifting of rural population, that the compact family group

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Sr.	State/Union Territory		Enrolment	
No.		Boys	Girls	Total
1.	Andhra Pradesh	10,204	11,425	21,629
2.	Assam	2,517	2,210	4,727
3.	Bihar	1,065	681	1,740
4.	Gujarat	39,316	32,065	71,381
5.	Haryana	253	121	374
6.	Himachal Pradesh	630	685	1,315
7.	Jammu & Kashmir			
8.	Karnataka	47,640	46,440	94,080
9.	Kerala			
10.	Madhya Pradesh	18,884	15,673	34,557
11.	Maharashtra	49,715	39,474	89,189
12.	Manipur	350	245	545
13.	Meghalaya	4(528	4,174	8,702
14.	Nagaland			
15.	Orissa			<u> </u>
16.	Punjab	467	328	795
17.	Raiasthan	N.A.	N.A.	N.A.
18.	Sikkim			
19.	Tamil Nadu	2,770	2,955	5,725
20.	Tripura	12,837	12,651	25,488
21.	Uttar Pradesh	19,672	15,133	34,805
22.	West Bengal	6,331	5,556	11,887
	Union Territories			
23.	Andaman & Nicobar Islands	143	124	267
24.	Arunachal Pradesh			
25.	Chandigarh	1,244	963	2,207
26.	Dadra and Nagar Haveli	70	103	173
27.	Delhi	10,586	8,966	19,552
28.	Goa, Daman & Diu	4,110*	4,000*	8,110
29.		259	262	521
30.	Mizoram	1,646	1,846	3,492
31.	Pondicherry	1,923	1,925	3,848
	Total	2,37,160	2,08,005	4,45,165

N.A. = Not Available

\* Estimated figures for sex-wise distribution

Source: Handbook of Social Welfare Statistics.

has started disintegrating. The problem of juvenile delinquency is more acute in the lower stratum of society which is more influenced by the disorganisation process. The nuclear family that settles down in the city's slums slowly loses its identity. Economic insufficiency and crowding around in urban slums result in neglect of children. Such neglected children are either victimised by adults for their anti-social activities or the children themselves become offenders.

Gore (1979) describes the following trends in juvenile delinquency as observed through official statistics:

- 1. The majority of the cases are in regard to offences against property. They consist of minor thefts in most of the cases. Children coming from the economically backward families are tempted to resort to petty thefts.
- 2. The number of girls involved in the offences is low.
- 3. A large number of cases are crime under local and special laws such as prohibition.
- 4. The juvenile crime is not an organised activity.
- 5. In recent years educated children of well-to-do parents are also resorting to crimes.

Bhende (1979) observes an increase in the number of juvenile apprehensions between 1963-74. Nearly a third of the cases were in the age-group 7-11, the other above 11 years. When the distribution of the juveniles apprehended in 1973 and 1974 in the different States was considered, it was found that the major share belonged to Tamil Nadu (1973, 40.73 per cent, 1974, 33.98 per cent) followed by Maharashtra (1973, 22.76 per cent, 1974, 25.96 per cent), the two most highly urbanised States of India with 30.28 per cent and 31.20 per cent of urban population in 1971. Other States with comparatively higher proportion of juvenile delinquency are Madhya Pradesh. (1973, 7.23 per cent, 1974 8.10 per cent) and Gujarat (1973 6.51 per cent, 1974 6.64 per cent).

Orphan and Destitute Children: It is expected that the total number of orphan children will go down in the period 1981-90, because of the decline in the paternal death rate. This reduction is evident from the last three census reports. With the growth in MCH services even the maternal mortality rate will be reduced. This will have a natural effect on the decline of orphaned children. With the legalisation of medical termination of pregnancy, unmarried mothers will take the advantage of legalised abortion. However, we cannot predict if the number of destitute children will go down unless there is significant improvement in the economic levels of poor families. Orphan and destitute children have a right to grow in a family surrounding, have a right to have parents. It is absolutely necessary to expand adoption and foster family care facilities. All these years there has been only institutional care of such children. Shift should be towards the development of non-institutional services. This will involve direct community participation in helping the destitute and orphan child. This will help to reduce the heavy burden on the existing institutions. They could be utilised for specialised cases such as severely disturbed children who cannot make use of family surroundings or of children needing institutional care, such as children of T.B. patients, cancer patients, leprosy cases, or children of long-term pr isoners be considered for foster family placements. There is a need to start creating a cadre of parents who will be able to take care of needy children. The orphan child should be helped to be adopted for which proper legal provision irrespective of religious background needs to be provided.

### Children of Working Mothers

All countries are faced with providing in some way for children who, for various social, economic or psychological reasons are unable to remain with their families or who need care outside their homes for part of the day. With increasing urbanisation, children do not get adequate care in their own families particularly if their mother is working. The need for day care is mainly determined by the number of mothers working outside their homes in various occupations with infants and children of pre-school age for whom arrangements cannot be made at home. The largest number of women are employed in agriculture. Amongst the Indian States, Andhra shows the highest number of working women. States like Punjab and Haryana, whose per capita income is the highest, have the least female work participation. A large number of women work in mines, plantations and government offices. Even the cottage industry and the construction industry employ quite a number of women.

There were 829 factory creches all over the country in 1970. It was observed that Assam has the highest number of creches. Maharashtra, Andhra, Tamil Nadu and West Bengal have considerable number of creches. The uneven development of factory creches in different parts of the country could be due to the different proportion of working factories, the total number of working women and the applicability of rules relating to creches, etc., in the different States. It is observed that there is a smaller number of creches in the organised sector while the community creches and mobile creches are emerging in different parts of the country through the assistance of the Central Social Welfare Board. Miss Khandekar (1976) has pointed out that per capita costs of factory creches are increasing because of the overheads. Moreover because of the difficulties in travelling, working mothers are reluctant to take their children to the factory creches. On the other hand, a large number of women working in employment guarantee schemes, working at construction sites in major construction projects in the country, bidi and tobacco workers, weavers in small scale handloom industry, etc., do not have any facility of creches for their children. It will be necessary to create a network of organisations that will take up the creche services. Creches and day care centres can become community centres through which all kinds of maternal and child care services, immunisation, and nutrition services could be developed.

### Child Labour

The Constitution of India which assures us justice, liberty and equality has recommended certain provisions against child labour. Article 24 of the

fundamental rights (prohibition of employment of children in factories, etc.) says: 'No child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment'. Article 39 (directive principles of state policy) says that the tender age of children is not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength; and also that childhood and youth are protected against exploitation and against moral and material abandonment. Section 45 relating to the provision for free and compulsory education for all children till the age of 14 years is also relevant to restrict child labour.

In spite of the large scale unemployment amongst adults, many children below the age of 14 have to work. General poverty of families compels children to work. According to the 1971 census 6 per cent of the total workers in India are children. In the 1961 census, boys of 6-14 years were found to be workers, educands and idlers to the extent of 17, 46 and 37 per cent respectively as given in Table 10. The corresponding percentages in 1971 turned out to be 11, 46 and 43 indicating an increase in the percentage of idlers. As for the kind of work done by children, most of it is in agriculture including agricultural labour as seen in the various censuses. Non-school-going children belonging to poorer class are forced to work on others' farms as employment in agriculture is the only avenue open to them. From the available data it seems that children do not contribute much to the total labour force.

TABLE 10 PERCENTAGE OF CHILDREN IN INDIA DURING 1961-1971 CENSUS BY AGE 6-14 YEARS

Census	Wo	rkers	Educands	Ic	llers
year	Male	Female	Male Female	Male	Female
1961	16.9	12.2	45.9 23.2	37.2	64.6
1971	11.3	4.5	46.0 27.5	42.8	68.1

Sources: 1. All India Tables (one per cent sample data)
2. Census of India 1961, Part II-A and II-B

The question of child labour poses problems in a variety of ways. There are a large number of legislations such as the Factories Act 1948, the Mines Act 1952, the Plantation Labour Act 1951, the Shops and Commercial Establishment Act, etc. So children do not get employment in the organised industry. But wherever work is done on a contract basis, there is no control over the contractors employing women and children of tender age. In hotels and small restaurants many children are employed. While considering the needs of working children, it will have to be noted that most of these children are out of school, they do not have benefits of medical aid and at a very tender age they are exposed to the bad side of the realities in life. Part time schools and vocational education centres will be needed for the working children.

Physically Handicapped Children

Physically handicapped children pose some special problems because of their handicaps. We do not have correct statistics about the population of all types of handicaps and their State-wise distribution. They have the need of institutional care, opportunities of education, and programmes which will rehabilitate them. Most of the work done so far is through voluntary effort with State assistance. Table 11 indicates that Maharashtra, Gujarat and Tamil Nadu have most of the institutions, while Orissa, Bihar and Rajasthan are not having enough number of such agencies. There are better services for the blind and the deaf while the services for the orthopaedically and mentally handicapped are not still developed in many States. To take care of the needs of the physically handicapped children we will have to create organisations for delivery of services first. Secondly, these services

TABLE 11 NUMBER OF INSTITUTIONS FOR THE PHYSICALLY HANDICAPPED IN STATES/UNION TERRITORIES

Sr. No.	State Union Territories	Blind	Deaf	Orthopae- dically Handi- capped	Mentally retarded	Total
1.	Andhra Pradesh	6	2	2	4	14
2.	Assam	4	1	<u> </u>	را برقار ای <mark>ک</mark> اری	5
3.	Bihar	10	2		2	14
4.	Gujarat	19	16	4	6	45
5.	Haryana	5	1	1		7
6.	Himachal Pradesh		- 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1			
7.	Jammu & Kashmir	4				4
8.	Karnataka	8	4	9	9	30
9.	Kerala	6	5	8	1	20
10.	Madhya Pradesh	8	9	6	3	26
11.	Maharashtra	24	19	13	8	64
12.	Manipur					_
13.	Meghalaya		1		_	1
14.	Nagaland					<del></del>
15.	Orissa	2	2		( <del></del>	4
16.	Punjab	4	3	10	6	23
17.	Rajasthan	2	<u></u> -	4	2	8
18.	Tamil Nadu	19	12	1	7	30
19.	Tripura	1	1			2
20.	Uttar Pradesh	11	17	2	4	34
21.	West Bengal	6	5	5	6	22
	Union Territories					
22.	Chandigarh	2	1	1	1	5
23.	Delhi	7	2	3	5	15
24.	Pondicherry	2				2
	Total	141	103	69	64	377

Source: Handbook of Welfare Statistics, 1975

should be in education, residential care, vocational training and rehabilitation. Thirdly, better budgetary provisions will have to be made to develop these services.

### SUMMING UP

The question must be realistically faced: how much attention should be given to children's needs? As discussed earlier the total child population between the age group 0-14 is going to be 270 to 280 million in the next decade. The present unprecedented growth in the total population is one of the major problems which aggravates many of the problems of children by the demands it places on family resources and social facilities such as additional space for school, teachers, food, milk, recreational facilities. etc. Any limitation of the number of children born in the next decade would depend on the millions of family decisions and the political mood in the country. Whether that mood takes pro- or anti-family planning attitude is unpredictable. If millions of families are going to be involved in this decision making, is it possible to reach them, educate them, without massive work? Who is going to do that? Administrators, social workers, journalists or politicians? The most important need would be to control population itself which will have positive effects on reduction of infant mortality and malnutrition.

Growing Urbanisation and Needs of Children: Though nearly 80 per cent of the population is in rural areas, there is a growing trend towards rapid urbanisation. Big and industrialised States like Maharashtra, Gujarat and West Bengal will have more urban population in the next decade. Though the present emphasis is on development of services in rural and tribal areas, urban slums also will require attention. Large scale rural population is migrating to metropolitan and smaller towns with families and children and there is tremendous pressure on the existing social services such as health and education. Due to over pressure these services are also diluted in quality. Children of working mothers, particularly those of construction workers, will need special attention as the pace of construction activity in the towns and smaller cities is likely to rise. With the growth of cities, it is inevitable to have growth of urban slums.

Involvement of Local Self Government: It is not a matter of this paper to discuss about the organisational set-up, but I still consider it as a need. At present the children's needs are considered only at national and State levels. Municipal corporations, municipalities or local panchayats are not involved in planning for children. Only some of the schemes are implemented through them. While voluntary organisations are also helping the governments to develop services to meet the needs, they will not be able to cover even the fringe of the population. For various programmes gram panchayats and municipal institutions should be considered a proper organisation to imple-

ment programmes. This will involve people's participation Let us take the example of running the integrated child development scheme (ICDS) in Bombay in which it would have been proper if the scheme was handled by the Municipal Corporation of Greater Bombay.

Inter-State and Intra-State Inequalities: It will be essential to note that there are large variations in the provision of services. The heart land of the country consisting of Rajasthan, U.P., Bihar, Madhya Pradesh and Orissa do not have well developed social services compared to other States like Punjab, Haryana and Maharashtra. The Centrally Administered States have better services and also higher per capita expenses in meeting health and education needs. During the next decade some effort will be needed to provide equal funds (based on total child population to all the States). Within the States all regions are not getting equal opportunities to develop social services. Maharashtra is a fine example of this. Three districts of Konkan and five districts of Marathwada are lacking general development as also in meeting some of the needs of children. In most of the States there are regional imbalances

Need for Statistics: To note the regional imbalances, it is necessary to get district-wise statistics of health, nutrition, education, etc. This will bring realisation to zilla parishads regarding the need for qualitative and quantitative improvements in their services.

Manpower: Most of those working for children at root level are low paid and very little facilities exist for the training of workers. Except a few supervisory positions in health and nutrition, most of the workers are women. There is no research evidence to show under what emotional pressures they work but they lack a feeling of security while working in rural area. This is a matter associated with our social structure and this needs to be given some thought. Appointment of male workers would be a solution, but will they be able to reach large number of women where segregation of men and women even in domestic life exists? Otherwise efforts will be needed to improve the confidence of female workers.

Investment in children is a long-term national investment to improve human resources. If the child dies of malnutrition, or drops out from school, or is handicapped and is unable to contribute towards national income it would mean large scale wastage. Paying attention to the needs of children would therefore be very important.

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# Organisational Structure to Meet Children's Needs

## Neera Kuckreja Sohoni

ORGANISATION IS often observed to be the weakest element in the theory and practice of social welfare. Much of this is due to historical reasons. Social welfare programmes emerged in the wake of rapid industrialisation in the west as piecemeal corrective action. They began with a specified objective of redressing the ills inadvertently caused by industrial growth (and its twin concomitants, viz., urbanisation and modernisation) for specific clienteles. At that stage, social welfare was more or less a sporadic and ad hoc relief activity which could be administered without elaborate organisational structures. Whatever action was to be initiated, could be managed through simple, ad hoc informal mechanisms operating at the level of the community or the clientele.

The second factor which contributed to the non-formal, unorganised nature of the social welfare sector was its extraordinary reliance on non-governmental and voluntary action. Unlike governmental operations which assumed massive bureaucratic proportions demanding equally elaborate organisational structures, non-governmental action remained the mainstay of social welfare. The latter, by its very nature, tended to be less reliant on highly formalised, organised mechanisms. Unfortunately, this legacy from earlier years, continued to pervade the social welfare field, even though the dimensions and scope of social welfare altered and expanded radically. Starting from purely remedial, piecemeal approaches, social welfare gradually took on the more basic 'preventive' and the more challenging 'developmental' roles. Yet, very little attention was paid to developing requisite organisational inputs in order to enable social welfare to perform its newer roles effectively.

This intrinsic weakness from the realm of social welfare has manifested itself in child welfare also, where particularly newer theories of child 'development', and 'growth' have given rise to 'child protection' and 'welfare' approaches, but not necessarily to newer organisational structures. Yet, child welfare is one field which, on account of its multi-sectoral and integrated nature, requires specific organisational mechanisms that can help bring about that integration. Neglect of organisational aspects can thus seriously undermine the viability and functionality of child welfare services.

In India, owing to a combination of factors, child welfare is forced to assume a massive operational scale. A high population growth rate which leads to a much more sizable child population and a higher dependency ratio makes a majority of Indian children fall into the category of socioeconomically handicapped groups. Thus, apart from biological vulnerability, it is the social and economic vulnerability of the Indian child that places it at the core of welfare action. Evidently, traditional child welfare mechanisms which in the west were originally conceived to service a small segment of the total population cannot, in the Indian context, be employed to reach a major part of our population. The differences are not only on account of the status that the needy child in India has been forced to acquire as a result of demographic evolution, (from being a peripheral to a central client group of welfare action), but they arise also from the nature of services that require to be rendered to the Indian child vis-a-vis the child in an affluent society. Here, the battle is basic, viz., that of assuring survival and subsistence to a large chunk of the child population rather than the fancier, cosmetic surgery type of corrective action applicable in the west. Efficient and timely delivery of child care services in such a context acquires a different kind of urgency, which, in turn, demands more carefully conceived and organised managerial approaches.

Unfortunately, this factor has not been adequately appreciated in the planning and programming of child welfare in India. As in the overall field of social welfare, plans are drawn and programmes are evolved, but not enough attention is given to organisational inputs. Much of the organisational infrastructure of the 1950s, for instance, continues to serve the programmatic interventions of the 1970s, although the programmatic parameters, objectives, and content are vastly different.

Over the three decades, there have been substantial developments and departures in the concept of child welfare thinking and programming. Basically, there has been a movement away from: (i) piecemeal and isolated to large-scale and blanket approaches; (ii) sectoral to cross-sectoral and from specialised to integrated programmes; (iii) uni-purpose to multi-purpose schemes; (iv) segmented age-group to intra-age group approaches. At the heart of all these movements has been the recognition of a need to reach the 'total' or the 'whole' child, in a sustained and integrated manner so that neglect in any one sector of activity or at any stage during the growth process of the child does not undercut, dilute, or negate the effect of what is done in another sector of activity or at another stage of its growth process. As appreciation of this continuum has grown, it has, to an extent, influenced plan and budgetary provisions, but whether it has made any dent on the organisation of child welfare activity is a moot point.

Similarly, shifts in plan emphasis have occurred from one plan period to another, aiming to gear national attention on a priority basis to certain sub-groups of the child population. These have ranged from the juvenile delinquent, to the malnourished child, to pre-school child, out-of-school child, and unemployed youth, and most recently, girls. Yet shifts in priorities have tended to remain verbal or theoretical. There has been little corresponding effort to consciously create or alter the existing organisational machinery to deliver child welfare services and action on a priority basis to these changing priority target groups.

### ORGANISATIONAL IMPLICATIONS OF CHILD WELFARE

Organisational structures ideally should derive their raison d'etre from the goals and objectives of child welfare adopted by, and relevant to, a society. In a primary poverty society such as India, where millions of children, alongwith their families, suffer from the consequences of poverty, a full-fledged infrastructure is required to assist the average family to perform its normal obligations to children in terms of nutrition, health care, education and social well-being. Since a sizable number of families and therefore children either live below subsistence or hover around that level,\* the situation should be considered critical enough for the government and society to give measures for the organisation of welfare of children an over-riding priority.

The experience of the past three decades, however, demonstrates to the contrary. The organisation of child welfare services has encountered a series of problems, some intrinsic and others extraneous and many of them chronic. Among the intrinsic chronic problems have been those arising from: (i) a lack of a coherent child welfare 'system' in the country; (ii) the low priority given to child welfare in the development strategy (inferable particularly from the low budgetary allocations); (iii) the lack of services matching the level of actual (felt) needs; (iv) the lack of access to services; (v) the lack of adequate logistical planning which is relevant to the needs of the clientele on the one hand and to the specifics of the service on the other; (vi) the lack of a policy perspective; and (vii) the absence of participatory structures. These are briefly discussed below.

## Lack of Coherent Child Welfare System

The overall organisation in child welfare has suffered from a lack of coherence and coordination. There is a plurality of organisations dealing with child welfare whether governmental, non-governmental or quasi-

<sup>\*</sup> In India, it has been estimated that the number of children from 0-14 has grown from 171 million in 1961 to around 232 million in 1974 and 243 million in 1979. In the same period the number of mothers in the age group 16 to 45 has grown from 93 million in 1961 to around 105 million in 1974, slightly declining to 96 million in 1979. Together, children and mothers are estimated to comprise nearly 62 per cent of the total Indian population. Assuming 40 per cent of these 62 per cent to be below subsistence, gives a stunning figure of around 150 million needy children and mothers who require to be reached through appropriate welfare services.

governmental, all of which subscribe to similar objectives, but do not necessarily share a common perspective or plan of work. Much of the programming takes place on an individual agency basis and there is no overall plan which earmarks and entrusts specified tasks to the multitude of agencies. This leads to a fair amount of duplication and overlapping which gets manifested at the highest inter-ministerial levels as well as at the grassroots level where multiple agencies may be found to be operating in pursuit of an identical objective for the same clientele.

Organisational incoherence is traceable directly to the governmental set-up. At the Central Government level itself, child welfare stands truncated as it is parcelled out among several Union ministries and departments. Among the ministries/departments dealing with child welfare are health, education and social welfare, food & agriculture, community development, and home (through the directorate of scheduled castes and tribes and the juvenile justice system). Unfortunately, the division is neither clear cut nor logical. Thus the Health Ministry takes charge of maternal and child health, family planning (now termed welfare) and nutrition. The Social Welfare Ministry, however, takes on nutritional programmes for the vulnerable groups. Subsidiary food and nutritional schemes are also carried out by the Union Department of Food while applied nutrition is attached to the Union Department of Rural Development. Likewise, education at all levels, including the pre-school level is entrusted to the Ministry of Education, yet pre-primary recreation is the responsibility of the Social Welfare Ministry. Institutional care services are entrusted to social welfare, yet, the subject of juvenile justice is handled by the Ministry of Home Affairs. Welfare of schedule caste and tribal children also falls under the aegis of the Home Ministry.

To add to this structural confusion, there are two extra-ministerial agencies, one governmental and the other quasi-governmental, viz., (the Planning Commission and the Central Social Welfare Board) which participate in the planning, programming or delivery of child welfare services in the country. Here again, there is considerable overlapping in the activities undertaken by the Board and by the Social Welfare Ministry. Most recently, the creation of the National Children's Board has added a new element in the organisational scene. The Board is set up under the leadership of the Prime Minister with the ministers concerned in the Government of India, ministers in charge of child welfare in the States and representatives of voluntary organisations as members. The purpose of this Board is to provide a forum for planning, review, and coordination of the various services directed towards children. However, since the Board has only recently been set up, it is yet to be seen how far it will help towards achieving a commonality of child welfare objectives and approaches in the country.

Another source of incoherence is the total lack of concerted action between governmental and non-governmental structures. Owing to the peculiar nature and popular appeal of child welfare, a plethora of voluntary agencies came forward to operate in this field. There is to date no national inventory of their number, activities, coverage, financial involvement, organisation and other details. Nor is there a cohesive administrative plan which can meaningfully associate each of these agencies in the pursuit of common targets and objectives. Inevitably, therefore, there is much duplication and wastage arising from parallel organisational structures that these agencies have perpetuated—in terms of staffing, budgeting, manpower training, research, evaluation, etc.

## Low Priority Given to Child Welfare

This is a problem generic to social welfare as a whole. Whatever the professed intentions of a government, it is a fact that social welfare figures less prominently in national priorities and even less at the time of budgetary allocations. Of the initially meagre allocations too, a portion gets inevitably chopped off owing to 'financial constraints', and some more is lost on account of 'lapsing'. Practically every budget if examined would uncover this chronic failure in the public budgeting system to honour the original budgetary provision for social, and particularly, child welfare.

Budgetary deficiency is deducible also from the absence of a growth path in the budgeted provisions for child welfare over given years. Take the example of the Central and Centrally sponsored schemes in child welfare. According to 'published statistics', budgetary provision for family and child welfare project, for instance, dropped from Rs. 9.8 million in 1974-75 to Rs. 5.8 million in 1975-76 and to Rs. 4.4 million in 1976-77. Centrally sponsored child welfare schemes (covering ICDS, services for children, and special nutrition programme), over the same period, dropped from Rs. 67.3 million to Rs. 38 million and Rs. 22 million respectively. The decline in ICDS budgetary provision alone was more than 75 per cent between 1974-75 and 1976-77 (i.e., from Rs. 57.3 million to Rs. 13.0 million).

Take another example. In absolute terms, the combined Central and State outlays on social welfare rose from Rs. 40 million during the First Five Year Plan, to Rs. 190 m. (Second Plan), Rs. 312.6 m. (Third Plan), Rs. 134.8 m. (in the Annual Plans for 1966-67 and 1968-69), Rs. 929.4 m. (Fourth Plan) and Rs. 861.3 m. (in Fifth Plan). In relative terms, however, the share of social welfare per se in the total budgeted outlay for social services has ranged from 0.2 per cent in the First Plan, to 0.6 per cent (Second Plan), 0.4 per cent (Third Plan), and 0.6 per cent in the Fourth Plan (Social services as a whole comprised 22.4 per cent of the total public sector plan outlay in the First Plan, and

<sup>&</sup>lt;sup>1</sup>Handbook on Social Welfare Statistics, 1976, Department of Social Welfare, Government of India, New Delhi.

<sup>&</sup>lt;sup>2</sup>Inclusive of Education, health, family planning, housing and urban development, water supply and sanitation, social welfare, welfare of backward classes, labour welfare and rehabilitation.

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declined gradually to 19.5, 17.3 and 16.1 per cent respectively in the Second, Third and Fourth Plan periods.

In the non-governmental sector too, insufficient financial support has been a common failing. There is no correlation discernible between budgetary growth, on the one hand, and programmatic development on the other. There has in fact been a striking gap observed between the rate at which non-governmental agencies have grown and the pace at which grants-in-aid to such organisations have been made available by the Government, or the rate at which the quantum of such aid has grown. All these financial instabilities have caused much uncertainty as well as vacillation in the practice of child welfare in India.

### Lack of Services Matching the Level of Actual (Felt) Needs

Both in quantitative and qualitative terms, existing child welfare services in India are not reflective of either the magnitude or the type of needs actually felt at the level of the clientele. It is not relevant here to quote greater details except to state generally that whether in the case of social services, or social welfare, or child welfare *per se*, the coverage is dismally low. (Often, the number of beneficiaries runs into hundred thousands when the number of those in need of the service runs into millions. Per capita expenditure on child welfare services as well as per capita coverage of these services both operate well below even the minimum required).

Another factor contributing to inadequacy of services is the fact that there is a lack of realism in the choice of the services being rendered. Often, the design, content and structuring of a service is super imposed on a milieu which is neither receptive nor actually in need of it. There are enough examples to amplify this point. In education, reliance on a heavy, formalised educational system; in the health field, the adoption of a health-centre based and primarily curative medical approach; in social welfare, an undue reliance on institutionalisation rather than on community-based action, etc., are all telling illustrations of inappropriate methods being applied to meet an altogether different set of needs. Inevitably, this has also led to the creation of organisational structures to service the systems which are proving at times dysfunctional and at other times totally redundant.

Even where the service choice is appropriate, there is poor logistical planning. Here too, there are several examples in support. In the vaccine programme, for instance, inadequate storage and transportation arrangements have been known to negate the impact of the vaccine. In nutrition, likewise, many of the supplementary feeding programmes have floundered on account of lack of knowledge of local feeding habits and preferences of the beneficiary. Insufficient backing through information support of family planning activities has been known to have caused a principal breakdown in the credibility of the family planning programme. In education, science teaching and other teaching aids have been proven to be dysfunctional on account of unfamiliarity with

the equipment, and total absence of equipment servicing facilities. The same failing has undermined the success of the so-called mobile elements in the rural health, nutrition, social welfare, and other fields.

All these servicing gaps and deficiencies are obviously linked to the absence of an efficient organisational system or network which can automatically provide for realistic decision-making, appropriate programme choices, workable methods of implementing and delivering services, etc.

### Lack of Access to Services

In the organisation of child welfare (as in other social sectors also), the inaccessibility of services is one of the weakest elements. This is owing to the fact that the entire range of services have been conceived vertically from the top down, with the metropolitan cities and areas serving as centres, and the successive administrative units, viz., divisions, districts, zillas, talukas, and finally, villages—serving as intermediate and peripheral levels. In almost all cases. the service tends to be fairly standardised at the apex, gradually diminishing in quality at the subsequent levels. Owing to the vastness of the geographical area to be covered, the physical remoteness and hence inaccessibility of certain intermediate and peripheral levels, and the absence of a wellorganised system of feedback and monitoring, the extent to which a service or a programme gets diluted at the lower levels is not fully known. (In many cases, this process of dilution may, and has been known to, have led to schools supposedly functioning without actual child enrolment, teachers existing merely on paper, bloated numbers of beneficiaries of supplementary nutrition programmes, etc.)

Another factor contributing to service inaccessibility is the initial faulty approach in not viewing the service as a client or community-based activity. In other words, the underlying premises is that the client must come to the service, rather than the reverse. This puts the onus of service utilisation on the beneficiary rather than on the service functionary. (This is also where the prejudicial market forces come into play. As long as there is a customer, there will be service, and the more the capacity of the customer to purchase a service, the better the quality of service). Unfortunately, this conceptual difficulty in servicing the clientele has not been appreciated or reflected in the organisation of social services (including child welfare) in India. Mobility of services has thus remained an illusive pursuit leading to dismal and familiar phenomena such as under-utilisation of services or their total unavailability in some rural areas; over-concentration of services and resources in urban areas; etc.

Lack of Adequate Logistical Planning

This refers to a two-fold dysfunctionality in the existing organisation of child welfare in India. The first arises from a tendency to base programmes and services on aggregative rather than selective criteria. Thus, child welfare

(as is true of other social sectors too) has been viewed broadly in terms of rural and urban child, with the urban slum child serving as an additional category during the 1970s. These are too broad and misleading classifications and have not encouraged meaningful or realistic planning and programming in the field of child welfare. Fortunately, some consciousness of typologies has arisen during recent years that has led to specialised approaches and, in some cases, action aimed at the tribal child, the destitute child, the child from families with income below subsistence level, etc. On a piecemeal basis, some attention has also been given to children of migrant workers, landless labourers, construction workers, and children in drought-prone areas, etc. However, this positive trend has not been accompanied by supportive organisational or implementation strategies, or the development of a sound logistical system.

Efficient logistical planning requires a clear understanding of what has to be delivered, to whom, at what point in time, and then, the creation of requisite organisation and methods. Whatever the theoretical progress in pursuing child welfare typologies, it is clear that concrete organisational backing is missing in the Indian context. Not only are programmes and services conceived fairly uniformly, irrespective of the typological context, but there is very little concrete base (in terms of manpower training, placement delivery network, etc.) for specialised approaches to work.3

The other logistical problem is to fit mostly sophisticated objectives. methods, and content of child welfare approaches into a primarily unsophisticated environment. When, for a particular project, the country accepts imported equipment and supplies, including transportation, for running given services, what is the indigenous technical base made available for maintaining, servicing and deploying that equipment? What is the local ability to absorb such sophistication and to benefit from it? What is the likely damage that may be caused to the local milieu from application of alien value systems and operational methods? These are central issues which are not always posed before introducing a programme—but have been known to have caused serious programmatic anomalies. (Take a simple illustration: in the applied nutrition programme, for instance, one key objective was to help the needy population to consume as well as sell the nutritional produce they grew. Where it implied consuming eggs by a vegetarian population, the

<sup>3</sup>Coping with this aspect, however, requires some hard-hitting administrative decisions as well as bold decision-making at the political level. Take the case of formal schooling, for instance. If compulsory school enrolment has to be accepted for all children, where is the logistical base for bringing in the child of migrant and construction workers, etc., into the formal school system? Recognising this inherent contradiction, should the policy maker adopt a different educational goal for this particular group of child population, in which case, he risks, the charge of promoting dualism? Or should the formal school concept and curricula, etc., be so broadly conceived as to accommodate a basically transient student group?

programme ended up as a poor force at least in this one respect! As another simple illustration, take the impact of hard-sell advertising of artificial milk and baby foods on urban breast-feeding habits. It is only of late that the great merit of fairly prolonged breast-feeding is being promoted once again.

## Lack of a Policy Perspective

One of the major weaknesses in the organisation of child welfare services in the past had been the lack of a policy perspective. Until 1974 when the national policy resolution was passed by Parliament, there were only segmented child welfare provisions featuring in individual health, education and other policy statements. Constitutional directives in respect of education, nutrition, employment, etc., were utilised as child welfare sanctions. Fortunately, with the 1974 policy resolution, there is a concrete national charter of children's entitlements which can help give the necessary policy perspective and framework within which to pursue child welfare activities, both in the governmental and the non-governmental sector.

### Absence of Participatory Structures

Participatory structures are considered crucial to the success of any developmental ventures. In social welfare and child welfare particularly, these acquire special significance. Where the client's own contribution to, understanding of, and participation in the service is so much responsible for its success, it is necessary that organisational arrangements should be made available for close client-service interaction. Unfortunately, due to historical reasons, child welfare evolved as an activity undertaken by a well-meaning third party (either government or private body) for (and not with or by) the people. This has kept a certain remoteness between the services and the clientele. At the same time, it has made the benefits of individual schemes appear like piecemeal doles rather than intrinsic uplift of the beneficiary through self-reliant and participatory action.

## ORGANISATIONAL REQUIREMENTS

In the light of the above analysis, we can now turn to a discussion and identification of organisational structures required to meet children's needs in the future. Organisational structures can be viewed in two ways. The first refers to various types of organisational entities and structures that are and can be associated with the planning, programming and delivery of child welfare services. The second refers to the organisational processes themselves which are employed in the delivery of child welfare services. Both aspects are essential elements in the successful planning and organisation of child welfare action. Given below is a brief review of the processes before going on to elaborate on the organisational structures.

### Organisational Processes

A common acronym representing organisational processes in public administration is POSDCORB where

- P stands for Planning
- O for Organisation
- S for Staffing
- D for Directing
- CO for Coordination
- R for Reporting and
- B for Budgeting.

In social and child welfare, it is necessary to add another symbol—viz., 'P', representing people's participation. For efficient programming, it is evident that all these eight elements be systematically developed, keeping in mind the requirements specific to child welfare in the future.

Planning: Planning relies on realistic data and projections regarding the target population (its socio-economic and demographic composition, its distribution, etc.); an estimation of its present and prospective needs; and an approximation of the type of service to be rendered, and in what manner, etc. As far as demographic data are concerned, there is sufficient and reliable base for the Indian planner to look ahead and plan intelligently. But there are two distinct additional inputs that will be required in order to make for realistic planning.

The first is to replace the existing top-down and primarily vertical planning style with a planning approach which percolates from the grassroots upwards, and simultaneously evolves horizontally. Some efforts in these twin directions have already been made in recent years. Some States in India, for instance, have introduced decentralised planning with the district serving as the emanating point of all plans. Inter-ministerial and inter-departmental committees are also already operating at the Centre and State levels to inject concerted programming, but these function mostly post facto, i.e., after the planning of child welfare activities has been undertaken. The setting up of the National Children's Board should help overcome this gap. What needs to be done in order to enable the Board to perform this planning role is to specify methods and schedules whereby the Board's thinking will be available to the Planning Commission at the time when plans are being drafted or finalised, and allocations fixed.

For strengthening the 'ascending' processes in planning, decentralisation upto the district level will not be enough. It will be necessary to create government appointed bodies which can function year round and help plan and monitor child welfare action at all levels right down to the village. Such bodies should have a fair representation from government and non-governmental agencies, individual professionals, academicians, and field level

practitioners. Examples of such bodies are available in some of the States where the State committees for celebration of International Year of the Child (IYC) have been set up. These are responsible for planning priority programmes for needy children on a long-term basis. Free from bureaucratic pressures and hierarchical loyalties, some of these bodies have accomplished a major change in the orientation of the State's priorities in child welfare. Such bodies, although operating at the State level, should have correspondents (either individuals or agencies) at all the lower administrative levels, as well as arrangements for liaison with State and Central planning bodies.

The second input concerns the skilful deployment of demographic and other data towards realistic and efficient programming. As recent demographic studies of Indian children have revealed, there is no homogeneity in the Indian child population. Nor is the broad sweeping differentiation between the rural and the urban Indian child anything other than misleading. Between the States, for instance, there are wide disparities of the levels of life and of demographic indicators. Crude birth and death rates, infant and maternal mortality and morbidity, child/women ratios, etc., are all vastly different.5 It is desirable that these differences be appreciated and reflected when planning for child welfare. In many cases, where assessment of prevailing illnesses, ailments and physical and mental handicaps among children are beyond the reach of existing statistical records in the country, due primarily to a shortage of medical help in rural areas, it is necessary that the Planning Commission and relevant State and local bodies be entrusted with the task of surveying representative sample populations. The findings from such surveys could greatly help improve the basis for realistic and selective programming.

Organisation: This refers to a structural system which is clearly conceived and provides for distinct entities at all operational levels. Unfortunately, as stated earlier, child welfare as a field suffers from a legacy of non-organisation. Agencies and structures in child welfare have grown as the needs and the work grew. This has led to an array of agencies operating simultaneously, with or without any linkages or even a common perspective. This has seriously diluted their impact, as well as damaged the working environment. Moreover, multiplicity of agencies has not necessarily meant a broad or an even national coverage. Many of the agencies have chosen to focus on convenient clienteles

<sup>4</sup>In Maharashtra, for instance, the committee has succeeded in gearing the IYC budget towards services for children in villages with population below 500 (such villages form from 40 to 50 per cent of the total villages in the country), and for children in unorganised sectors of employment. It has also successfully evaded the traditional reliance on formalised, institutional approaches in favour of non-institutional action such as, sponsorship, foster care, etc.

<sup>5</sup>Child/women ratios, for instance, have been reported for 1971 as varying from 782 in Andhra Pradesh to 1192 in Assam. Are these differences on account of vital birth and death rate differentials or owing to inaccuracy and unreliability of vital statistics and of census, counts? See Prof. Kumudini Dandekar's "Demographic Status of the Indian Child" in *The Child in India*, Somaiya Publishers (forthcoming).

(primarily urban), and on less complex tasks. (Supplementary feeding rather than nutritional education, formal schooling rather than non-formal education and employment preparation; piecemeal curative action rather than preventive approaches including community education in public health and environmental hygiene; etc.).

Until the recent creation of the National Children's Board (with equivalent bodies in some States), at the national or State levels, no distinct governmental bodies actually existed which were responsible exclusively for child welfare. Several ministries, departments or directorates held charge of individual aspects of child welfare so that organisational coherence or unity was hardly possible. In the next few years this aspect should be systematically developed so that a proper organisational system is set up that can cope with the child welfare programmatic responsibilities. Such a system should obviously manifest itself from the highest to the lowest administrative levels. (Further details including a possible format proposed in the discussion later on organisational structures).

Staffing: Staffing refers to the entire process of manpower planning, training, placement and utilisation. Staffing is a key variable in child welfare where the worker has so much responsibility in shaping not only the success of the service but also the personality of the beneficiary. Efficient staffing depends upon reliable assessment of manpower needs. This, in turn, demands an identification of the target population, and the nature of services to be provided, alongwith a general relationship between target populations and the nature of level of activity. In addition, at the micro level, manpower demand needs to be assessed in relation to the structure of organisations dealing with the services, occupations, specialities and skill-composition operative in the organisations and in the overall field of child welfare, and desirable norms of staffing. Based on these, realistic manpower planning, training and utilisation strategies can be worked out.

Unfortunately, owing to the primarily informal set-up of child welfare, and the fact that it has not evolved as a full-fledged professional discipline (not only in India but elsewhere), staffing in this field has not received any serious treatment at the hand of development planners. Another ramification of the above mentioned evolution has been the absence of sufficient professional manpower to cover the needs of child welfare. Manpower planning in child welfare, therefore, must need to include provision for para-professionals, volunteers and the families themselves. This is especially true in respect of the future when child welfare programmes are expected to be mounted on a much more comprehensive scale.

The composite nature of child welfare will need to be borne in mind when developing activities, as also, the need for creating a 'mix' of general with specialised skills. Both these aspects have been largely ignored in the past and existing training activities in the country. For the future, particularly to support the application of the Integrated Child Development

Scheme (ICDS) on a countrywide basis, the task of gearing training to the composite nature of child welfare will become unavoidable and crucial. Alongwith training, manpower placement will need to take into account that both the skill and deployment of personnel are appropriate to the task which is expected to be performed. It has been a common failing in the past (not only in child welfare but in other social sectors as well) that personnel have proven to be dysfunctional on account of being ill-matched to their immediate occupational requirements and milieu. This type of manpower wastage will to be avoided at all costs when planning for future.

Because of the physical impossibility of reaching all needy children with a minimum level of staff and services, it will also be necessary to include provisions for training and education of parents in the basics of child welfare with a view to upgrading the level of parental competence. For this purpose, arrangements will need to be made to create a pool of community educators and supportive facilities.

Directing: This refers to the process of development of an organisation to meet its given objectives. It involves management and guidance of the organisational network along a well-charted path, course corrective mechanisms en route, and a constant, vigilant alignment of agency procedures with close-range targets and long-range objectives. In more sophisticated settings. direction can help evolve and implement the most efficacious and least costly method of serving a clientele. Such a level of functioning, however, is an illusion in the Indian child welfare scene where the unknown variables are plentiful. However, directing at a less sophisticated level can certainly seek to minimise wasteful and fanciful pursuits in child welfare, at the same time allowing organisational networks and programme objectives to be aligned more closely to prevailing Indian realities. Directing also encompasses introducing arrangements for optimising the benefits from given programmatic inputs. This implies taking into account the synergistic effect of inter-sectoral and inter-age group approaches in child welfare. It is evident that if the ambitious tasks envisaged here are to be carried out, directing as an element and function of organisation will need to be refined and polished.

Coordination: This is basic to the success of any activity, but it has even more central significance in child welfare where the totality and unity of the child as a beneficiary can only be protected and nurtured if the various sectoral and age-group activities operate in a complementary and mutually reinforcing way. This requires reaching the same child with a composite service (which encompasses health, nutrition, education, welfare, etc.) through all the stages of its growth process (starting from pre-natal age to adolescence). This can work only if there is capacity in the existing system to service the needy child, in all areas of its need. If that capacity, and, therefore, the corresponding infrastructure, is missing, coordination can only remain a vision or a myth. One of the commonly observed fallacies in the organisation of child welfare in our country has been this unilateral call for coordination.

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Obviously, coordination can take place only when there are units in existence that can come together to coordinate. Similarly, in order to coordinate, there should be a coordinating body. With the creation of the Children's Board, at least this organisational lacuna or anomaly has been rectified. It is now imperative that this Board be equipped with adequate powers to enforce coordination among the various agencies engaged in child welfare. Likewise, it should also have some administrative flat to compel various levels in the administrative hierarchy to coalesce and work in harmony.

Reporting: Reporting is primarily a programme intelligence activity. It implies adequate arrangements for reliable monitoring, reporting and feedback on the performance of the organisation, and of the programmes, in relation to the stated objectives of both the organisation and the programme activity. It also involves a restructuring of agency and programme objectives in the light of continued assessment of ever-changing needs. Reporting thus encompasses research and evaluation, and meaningful feedback of the findings of both, in the further refinement of the organisational process. In that sense, this is an important element contributing to a sense of dynamism in the organisation. Since the child is not a static but a growing organism. child welfare activities too are compelled not to be static but dynamic, in which process, reporting has a key role to play. For ideal results in reporting, it is desirable that agency and programme objectives be clear cut, and the programme evaluation and review techniques be carefully developed. (In some other sectors of activity, PERT and other reporting systems have been fairly well developed. Some of these, such as, cost-benefit approach, are also being applied to the social sectors, viz., health, education, etc., To what extent these can be applied to the child welfare sector is still to be seen). Unfortunately, so far, both research and evaluation in child welfare have received only minimal and piecemeal attention. Reporting per se, is also viewed as a routine type of formal recording of progress to-date, rather than as a tool contributing to intelligent programming. A common failing of reporting in child welfare in India is the fact that it concentrates on functional rather than substantive (or quantitative as against qualitative) aspects. Thus, programme reports are compiled on the basis of the number of units set up and aided, rather than the number of beneficiaries reached and their proportion to the total required to be reached. Such qualitative information is available only in selected research evaluation studies undertaken by the government or a voluntary agency or an academic department. In this case, the problem is one of accessibility to the findings. To date, there is no national inventory of the research and evaluative studies undertaken in the field of child welfare. Nor is there a centralised recording system to keep track of on-going, prospective and completed research. Individual listings are available from different central agencies sponsoring child welfare research and investigation (such as, from the Government of India, Planning Commission, Department of Social Welfare. Social Welfare Board, ICSSR, National Institute of Public Cooperation and

Child Development, etc.) But due to poor recording systems, even where reports are known to have been undertaken their findings may not be available.

Furthermore, in the absence of a specific national inventory of reporting needs or of reporting work undertaken, there is no way to avoid overlapping and duplication. Also, there are the inevitable inter-agency suspicions to freely share available findings, further restricting the use of intelligent information on the broadest possible scale.

Yet, for meaningful programming, it is essential that this disparate tendency be discouraged. Alongside, it is necessary to assign to one agency the task of compiling a national inventory and network of reporting, feedback, and dissemination. This will eliminate duplication as well as discourage individual bureaucracies to hold on to the intelligence they possess. Since reporting is closely linked to planning, it is necessary that such a body should operate under the direction of the Planning Commission. There is also an urgent need for evolving criteria for qualitative<sup>6</sup> (as against quantitative) reporting in child welfare activities.

Budgeting: Budgeting is a tricky function. It can either make or mar a programme. Intelligent budgeting requires a planned and calculated look ahead based on a carefully viewed and digested experience of the past. Efficient budgeting can itself lay out the parameters for efficacious programming. Budgeting, ideally, should be in relation to the projected growth path of a service. But in practice, what is most commonly resorted to in child welfare is an incremental type of budgeting. Most estimates are drawn on the basis of the previous year's allocation plus some per cent.

Owing to overall budgetary constraints, budgeting in social and child welfare, particularly, is a grim and pessimistic exercise. Budgetary requests are deliberately bloated knowing fully well that child welfare being the least favoured sector, they will face automatic pruning, plus further cuts in case of unforeseen fiscal shortages. Notwithstanding this meagreness in approach, the child welfare sector (alongwith social welfare as a whole) has been frequently accused of under-utilisation of the allocated amount. This is a serious fault which needs to be weeded out totally. Where the budgetary needs are so much greater than what is allocated, there is no justification at all for under-utilisation of the allocated amount. This is one area in which much greater efficiency and greater absorbtive capacity will need to be built up in the course of programming for child welfare.

People's Participation: This is a crucial variable in the success of any

<sup>6</sup>Qualitative reporting would include, for example, not only the number of children fed under a nutrition programme, but the extent to which their nutritional status improved. Likewise, in case of the vaccination programme, the data would indicate not only the extent of immunisation but the extent to which the incidence of the disease was lowered. In education, school enrolment data would be recording not only enrolment, but also retention at the end of the year, etc.

organisation dealing with people's wellbeing. In case of child welfare especially, this element takes on even greater urgency and relevance. In this field, with chronic shortage of physical, material and manpower resources, the family has often to become the principal programme functionary at the ultimate delivery stage. In other words, the people become the service. In such a case, their involvement, orientation, briefing and participation in the planning, running, and utilisation of the service becomes a crucial organisational input. Yet, this aspect has not been sufficiently reflected in existing child welfare approaches in the country. This is notwithstanding the early origins of this welfare in India being located in public and voluntary action. Except for individual, rare experiments, the main chunk of child welfare activity has functioned in India without the involvement of the family as a composite beneficiary unit. In the absence of such participation and involvement, the impact and reception of child welfare interventions have been minimal. It is now recognised that failure in school retention, or lapses in child health occur on account precisely of parental competence being left outside the nurview of the existing child welfare activities. These linkages between adult involvement and better utilisation and success ratios of child welfare services are only recently being appreciated. This is a healthy trend which will need to be carried further on a much more expanded scale.

Apart from families, people's participation also refers to the involvement of volunteers and of voluntary agencies in carrying out child welfare objectives and activities in the country. This is an important supplementary source to governmental action in this field. Fortunately, the Central Government showed early recognition of this when it set up the Social Welfare Board with the specific task of encouraging and coordinating the non-governmental sector's involvement in the field of social welfare. Even here, the grant-in-aid and other procedures adopted by the Board over two decades ago need to be carefully examined and renovated wherever possible in order to accommodate fresh realities and requisites of the non-governmental scene in social and child welfare. Finally, fresh participatory structures have to be designed in order to involve people in decision-making and implementation processes in child welfare. In this context, creation of citizen's committees for child welfare at all administrative levels may be one possibility. (Such an experiment is already being tried with some success in connection with the celebration of IYC in Maharashtra, for instance.)

Finally, people's participation also encompasses mobilising additional material resources. This has recently been attempted through the creation of a special child welfare fund to which tax-free donations are permitted. Additionally, industry, as a sector, can represent a powerful supplementary resource for child welfare in India. As pressures for environmental and social responsibility of business have risen, industry has been persuaded to come forward to participate in social development. This trend should be widely tapped and successfully deployed in improving the technical quality and

material base of child welfare activity in the country.

From processes, we can finally move on to delineating the organisational structures themselves.

### ORGANISATIONAL STRUCTURES

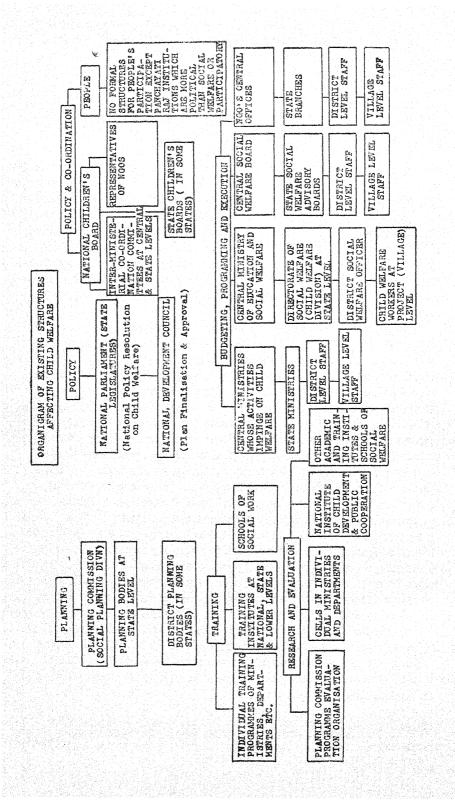
Organisational Structure as a term refers to the physical as well as the qualitative elements in an organisation. The physical framework of an organisation consists of its constitution, functional scope or terms of reference and the POSDCORB elements reviewed above. In addition, an organisation may be viewed in qualitative terms, viz., its system of division of responsibility, decentralisation of authority, mode of decision-making, organisational flexibility, etc. The latter set of indicators help identify the basic model of an organisation, viz., whether it is monolithic or participative and pluralistic or whether it is bureaucratic or transbureaucratic. (The last is also referred to as organismic.)

The bureaucratic model is the more conventional and also the more dominant model. It has been operative in private and public sector in both developed and developing countries. This type of agency operates by a given set of rules and there is a hierarchical organisation of offices. This model relies heavily on the higher echelons [on the (questionable) assumption that both power and knowledge exist at the top]. This makes the agency an elitist and a stifling operation. Thus arises the need for an alternative or the transbureaucratic model. Here, decision-making is an open process and staffing is also drawn from a heterogenous base, yet preserving the level of competence and skill, and increasing its variety. In this model, the emphasis is more on the way in which individual tasks contribute to the whole and upon the development of patterns of control and communication which increase people's effectiveness in carrying out the tasks.<sup>7</sup>

It is evident that although the latter model is most appropriate to the social welfare field generally, as well as to child welfare, the former model represents the stereotype of organisational structures that have hitherto obtained in India. An unfortunate fact is that bureaucratic structuring has not only found consistent support in government but also in the non-governmental sector. As voluntary agencies have grown in size, budgets, and involvements, they have inevitably developed into large bureaucracies, often sacrificing their initial strength arising from their openness and flexibility.

Owing to heavy reliance on the bureaucratic mode of organisation, participatory structures enabling people to participate in social as well as child welfare have barely developed.

<sup>7</sup>For further discussion of these two models, see Eric Trist, "Management and Organisation Development in Government Agencies and Public Enterprises" in United Nations Document No. St/TAO/M/52/Add, 2, pp. 1-15.



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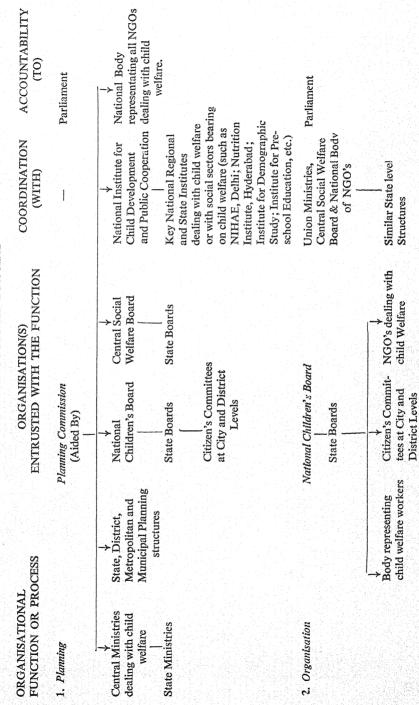
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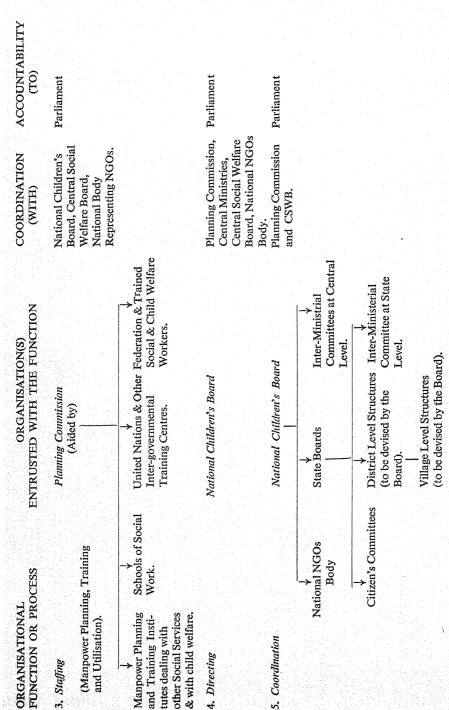
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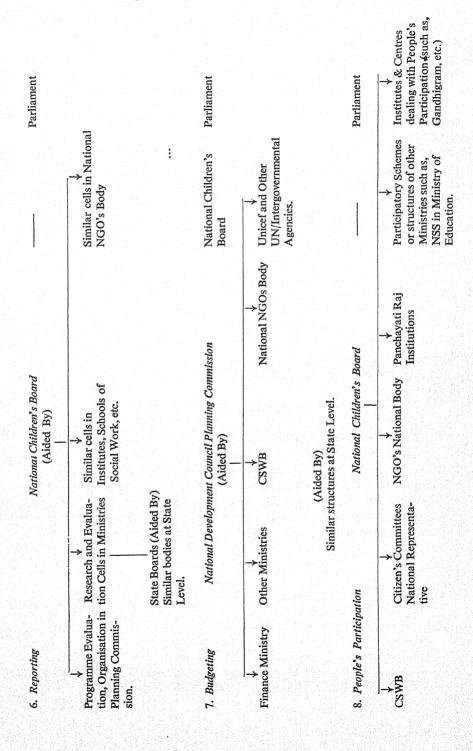




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In planning for the future, it is imperative that this bureaucratic bias in existing structures be drastically altered. Is that possible, and if so, how?

Currently, the organigram in child welfare is somewhat like that on page 586.

As is evident from the organigram, and from the earlier discussion, there are very few formal linkages between various organisational functions or processes. Similarly, formal mechanisms of coordination (horizontal) and accountability (vertical) are also lacking among various types and levels of organisations dealing with child welfare. In that sense, the present organisational structures do not qualify as a 'system'. Lastly, there is no institutional provision for the three resources, viz., governmental, non-governmental, and people to liaise, cooperate and, wherever necessary, converge.

Assuming that the existing structure is time-honoured and tested, and therefore highly resistant to any radical<sup>8</sup> organisational change, it is possible only to propose minor adjustments, amendments and additions. It is equally true that the existing bureaucratic model must also prevail, but perhaps some mechanisms can be devised so as to make for greater participation by the community and by the professional from outside the government bureaucracy. Coordination, reporting and accountability among various organisational processes and entities can likewise be strengthened by indicating formal channels. Keeping these considerations in view, a re-structured format for the child welfare organisational set-up in India is proposed (pp. 587-89). This should be treated as purely indicative and suggestive.

### CONCLUSION

In conclusion, it must be conceded that any effort to reorganise existing structures so as to have greater functional efficiency can only be attempted with great care and caution, and after careful study of all the procedural and programmatic ramifications. Equally, what needs to be acknowledged as hard core reality is that existing structures are deficient and in need of organisational overhaul. Unless this is undertaken, child welfare objectives and pursuits will remain at best platitudes and, at worst, a mockery.

<sup>&</sup>lt;sup>8</sup>Radical measures would refer to, for instance, dismantling the present functional setup of government ministries and their replacement by ministries focussing on age-groups and vulnerable socio-economic groups. That would mean organisational fragmenting of thecountry's population (into ministries for women, children, aged, handicapped, youth, scheduled castes, tribals, etc.)

# Administration on Child Welfare Services in India

### S.D. Gokhale

CHILD WELFARE as one understands today is a nebulous concept. It includes health services such as pre-natal, post-natal care, immunisation, food, housing. It also includes educational services such as pre-primary school, primary school and a host of other subjects such as science education, decentralisation of education, etc. It also implements in the field of welfare which includes services for normal children such as recreation, day care centres, creche and at the same time includes services for special groups such as destitute children, delinquent children, handicapped children, orphans, etc. The concept of child welfare cannot be reviewed without thinking of child welfare policy, legislation for children, legislation regarding child labour, administrative machinery and the service delivery systems.

Though the subject of child welfare is serviced by various departments such as health, social welfare, education, home, etc., at the federal level, we may find a similar fragmentation at the State level. In addition to these implementing agencies, governmental agencies such as the Planning Commission and the quasi-government agencies such as the Central Social Welfare Board and zilla parishads are involved in implementation and administration of child welfare. In addition, non-governmental organisations such as the Indian Council of Child Welfare, the Indian Council of Social Welfare, etc., are also involved in the programmes as well as the implementing of child welfare services.

Before we consider this subject further it may be appropriate to identify the critical areas of child welfare.

### THE CONTEXT OF POVERTY

This is a factor that emerges again and again in the analyses of individual authors. It is a poverty of means in relation to wants, which is more than an economic poverty, a poverty related to services, to infrastructure, and to opportunities. This sort of poverty is not necessarily overcome or confronted with improved GNP and per capita income, and requires deliberate measures. An otherwise rich country with impressive indicators of economic performance may still know this poverty of services or opportunities (there are several examples of such countries in the Asian region and elsewhere).

Conversely, a country that is economically poor may be rich in the sense of being endowed with a basic infrastructure of social services. This type of poverty provides the primary context of child welfare measures in India. Here, apart from straightforward economic destitution, there is deprivation caused through a lack of availability and insufficiency of social services. In countries such as ours, even if income levels and purchasing power were grossly upgraded for rural and for urban populations, it may still be quite a while before the availability of services can be actually assured to all sections of the population. And even that availability cannot come by automatically. It requires specific preparatory steps. This, in our opinion, constitutes the major credibility gap in the current and prospective thinking on child welfare in this country. Whereas we are constantly engaged in debating and refining the methodology of increasing GNP/GDP and of reducing economic poverty, we have not sought to formulate similarly a methodology or a strategy for reducing social poverty of services and of opportunity.

Before we are accused of mouthing vague generalities, let us give an illustration. We can project a certain rate at which manpower training and development must take place in order for that manpower to run the services required at a certain projected point in time. But unless we initiate requisite policy steps to ensure the placement of such manpower evenly across the country, we can only end up with greater concentration of such manpower in the urban areas where a ready purchasing power exists. Thus whatever manpower planning and development is undertaken, the effect of that gets largely diluted in response to market forces. The net result, as in the medical field, is that 'development' continues to cater to isolated pockets of affluence, ignoring the needs of the infinitely vaster deprived population. This is an example of a lack of realisation (or a credibility gap) of one type. The other type is purely economic with which Panchamukhi has delt at length in his article. Through his analysis he reveals the virtual absence of an 'economics of child development' because of which, allocations are made without sufficient scientific basis. In his view, it would be necessary to develop, first, an analytical framework of child development policy, and, second, systematic thinking about the economic aspects of child development. This would imply coping with such specifics as the optimum supply of child welfare services, the amount to be spent thereon, and who should meet the cost of its provision, etc. Unfortunately, as the author demonstrates, there is no realistic resource base for reaching the needy children in our present or projected context. After giving the estimated resource requirements in the fields of health, nutrition and education, he concludes rather predictably, that "it would be unrealistic to assume that all the required welfare and developmental services

<sup>&</sup>lt;sup>1</sup>To quote him, "If the psychology of the child is young, the economics of the child is younger still."

can be supplied to Indian children<sup>2</sup> in the near future".

### DEMOGRAPHIC PRESSURE

This brings us to the second important factor determining the status of child welfare in India which is the demographic pressure. Pressures of demography can be many-fold. Apart from absolute increases, there can be serious disharmonies arising from unnatural bulges of individual age groups in a population. These factors cumulatively account for adverse dependency ratios and a much larger fertility base, thus placing further strains on a society and its economy. That India is deeply submerged with those negative demographic pressures is too well appreciated to deserve a discussion here. But there are two ramifications of the demographic path on which India is helplessly (shall we say hopelessly?) treading on which we would like to dwell briefly. Firstly, the large fertility base and its implications are not being sufficiently appreciated and reflected in the family welfare and health measures. The fertility rate, as it is known, is closely linked with the infant death rate. In India, although remarkable progress has been recorded in the downward trend of infant mortality from the high level of 183 per thousand live births in 1941-50 to 122 in 1971, much yet remains to do be done. According to a WHO estimate, unless infant mortality is reduced to 75 per thousand, it would not be possible to control fertility. The causes for high infant mortality are difficult to spell out or overcome but in general it has been observed that neo-natal deaths are primarily due to pre-natal and post-influences such as immaturity, birth injuries, congenital malformations, etc. On the other hand, as UNICEF has suggested:

Children who survive the first month of life but die before they complete one year, usually succumb to post-natal influences such as the various epidemic diseases, diseases of respiratory system, faulty feeding and environmental factors. Thus deaths in the second to twelfth months are largely attributed to preventable causes, *i.e.*, factors associated with environmental conditions.<sup>3</sup>

Infant mortality is, therefore, largely a non-institutionalised phenomenon. Yet much of health care in India has concentrated on non-perambulatory and

<sup>3</sup>UNICEF, Statistical Profile of Children and Youth in India, New Delhi, November,

1977, p. 11.

<sup>&</sup>lt;sup>2</sup>According to Panchamukhi, the total number of children covered under one or many of the child welfare and development services was 230 million in 1972, expected to go to 270 million in 1981 and 370 million in 2000 (according to high projection or an increase of nearly 60 per cent in the course of 30 years. To this, if mothers in need of services are added (as per medium projection) 55 per cent of the total population in 2001 would become eligible for various welfare services.

institutional approaches with the onus of health care lying on a medical centre and a medical doctor. In the existing system, the entire health service programme is pivoted around metropolitan and capital cities serving as centres, with the coverage of rural areas being attempted through intermediate institutions such as regional and district hospitals and primary health centres and sub-centre. The coverage and quality of health thus rendered is at its best in the centres, gradually diminishing in intensity at the intermediate levels and substantially failing at the lower of the peripheral levels. In any case, the nature of health care, howsoever meagre and feasible through such a delivery network, has only been curative. This has not permitted a major dent to be made, among others, on infant mortality.

As higher infant mortality has been a prime inducement for producing more children, family planning has been an important element in the country's health policy. In the absence of assured survival of infants, Indian parents have been reluctant to accept the low birth profile. By one estimate, at any time in the country, there are five million expectant mothers in the last trimester given a bulky fertility base. It is evident that a much more vigorous informative and motivational campaign has to be mounted in order to prepare the present and prospective parents for their reproductive role. Simultaneously, measures preventive of infant mortality must reach the same clientele in order to converge and have a mutually reinforcing effect. This endeayour for convergence of the twin strands of a comprehensive population policy is not still evident in the country's health policy and measures. In the absence of this and of the requisite programmatic infrastructure, it is difficult to see to what extent there is a realistic base for achieving a reduction in the birth rate from an estimated 30 per thousand in 1979 to 25 per thousand by 1984. The impact of the recently proclaimed family welfare approach has yet to be seen and assessed. Whether it is merely the old family planning intervention dressed out in a new garb or it is actually a substantive departure from the previous compartmentalised and isolated approaches is difficult to say at this early stage. It is clear, however, that any convergence in order to be effectively implemented would have to be both programmatic and structural (the latter referring to manpower and physical infrastructure of the health service).

Apart from health, the pressures of demography bear heavily on the socioeconomic life of a nation. A large base of fertility, a high population growth
rate, etc., all lead to a large number of new entrants into the labour market,
and prior to that into schools and educational institutions. Increasing
numbers also bring along corresponding numbers of new claimants or clients
of social welfare as well as nutritional and other services. The pressure of
rising demands from these younger segments in the population places
unprecedented strain on the socio-economic services available or likely to
be available. That leads to shortfalls of services and resources (both material
and human) and causes a crisis of frustrated aspirations, in turn constituting a

threat to the stability of a society. While this chain reaction is observed, perhaps even comprehended, and routinely talked of, it is a matter of some doubt whether its policy and action implications have been sufficiently concretised. In other words, just as the social implications of the context of poverty have remained on the periphery of the planners and the policy-makers' consciousness in India, we feel that, similarly, the social ramifications of the demographic process have either eluded or been ignored by the development planner.

### CONCEPTUAL PROBLEMS AND CONSTRAINTS

Apart from a poverty of means, the field of child welfare suffers also from a poverty of conceptual clarity and coherence. Conceptual problems arise from ambiguities of ideas, of terms, and objectives. In child welfare, for instance, the terminological pendulum has swung uncertainly between child welfare and child development but the transition, whatever it is on the conceptual plane, has not touched the programmes. Another concept, with difficult translatability, is that of integration or an integrated service. In many child welfare forums, the point has often been made as to how to integrate and what. The latter query is not meant to be facetious since there is some pith in the contention that in order for integration to take place, there must be entities or activities to integrate.

It is here that we run into a basic conceptual problem. This concerns the identification of a single authority with which responsibility rests for planning, programming and monitoring of the child welfare field. At present, child welfare stands dispersed and fragmented amongst multiple organisational structures and bureaucracies. While there has been a consistent call for coordination among these, there has been little effort to spell out who should coordinate when, and how that coordination should take place. UNICEF. led by its sister agencies, has held the firm view that no separate plan for children is warranted. The reasoning is that this would mean isolating the child from the adult, and in the bargain, hurting it vis-a-vis allocation of resources, particularly since the child would immediately be downgraded as a less vocal, less articulate and, therefore, less urgent priority. Also, it would form a bad precedent, and could encourage other groups in the population such as the youth, the aged, the women, the handicapped, etc., to each demand a separate plan. Yet, within the plan, admittedly much more needs to be done to place child welfare on a surer footing. How to ensure this? One recommendation among others calls for a specialised planning agency for children<sup>4</sup> and for wider participation in the planning process by subject specialists.

Another useful suggestion is to have a series of micro plans (with

<sup>&</sup>lt;sup>4</sup>The difference between separate planning and a separate body specialising in planning for children is one that needs to be carefully noted and appreciated.

area-based and grassroots type of planning ingredients) that can provide a pieceby-piece montage of child welfare problems and status, rather than

the generally misleading aggregative national plan.

Closely related to planning is the suggestion to have a clearly formulated national policy on children which can provide a useful framework within which to pursue the various child welfare activities and interventions. Such a policy declaration not only grants the necessary moral backing and sanction to child welfare endeavours in a country, but also helps evoke better material support from governmental budgeting for child welfare.

The extent to which law itself can serve as the agent of social change is a debatable proposition. But what is beyond dispute is the fact that law defines the parameters of programming, and that, without a progressive legislation. it is difficult to conceive of dynamic programming. Conceptual advances in the philosophy of child welfare, regrettably, have not found their reflection in legislation, with the result that the laws regulating child welfare continue to be archaic, even passe.5 The major anomaly in current child welfare legislation in this country and in the region is that it is not current. Many of the legislations governing this field are carry-overs from colonial times. They are also limited in scope, being rooted more in the 'correctional' than in 'developmental' orientation. Nowhere is this archaicness more evident and harmful than in the field of social defence. In many countries, Children's Acts seek to equate the destitute child with the delinquent. This stigmatises the normal child, on the one hand, and also affects per capita disbursement of facilities for the delinquent child by unnecessarily crowding the juvenile justice system with non-delinquency cases.

There is also an unnatural reliance on institutionalisation rather than on community-based and non-institutional approaches, notwithstanding the demonstrated and widely shared findings of several studies here and elsewhere, that, beyond a point, institutionalisation has only diminishing returns.

Happily, there is some enlightened appreciation in recent years regarding the limitations in excessive reliance on law as being the panacea for social ills. On the contrary, it is gradually being conceded that law can only provide the framework for and the legitimacy of child welfare action. In order for action to take place, not only have the enforcement mechanisms to be strengthened but also massive resources have to be raised to help carry out the legal mandates.

### MANPOWER TRAINING AND UTILISATION

Manpower training and utilisation remains one of the weakest elements

<sup>5</sup>This fact was amply brought out in a study of Juvenile Justice System in India undertaken by the author and Mrs. N.K. Sohoni jointly on behalf of UNSDRI, Rome, See UNSDRI, *Juvenile Justice*. An International Survey Publication No. 12, Rome, February 1976, pp. 15-44.

in the organisation of child welfare. In its previous regional conference convened by the ICSW at Teheran this aspect had served as the theme of the conference. The deliberations there amply demonstrated the existing deficiencies in social welfare manpower approaches in the region. Among others, it is felt that there is clear-cut imbalance between the available trained personnel and positions to be manned. This has slowly led to the healthier practice of utilising less sophisticated, but more need-specific personnel. In public health, for instance, there is a definite move towards using barefoot doctors, community health workers, para-professionals and volunteer workers. Similarly, in child welfare also, the trend seems to be towards more and more utilisation of social work aides, para-professions and volunteers.

Another unfavourable practice was in the field of manpower training, where training for child welfare was offered in a segmented, compartmentalised manner (along health, nutrition, education, rehabilitation, etc.). The personnel, manning each of these sectors, were likewise treated as isolated specialists. Now, following the experience elsewhere, countries closer by too are generally moving in the direction of multi-disciplinary training and manning in which doctors, social workers, psychologists, teachers, etc., seem to make up a team for child development.

### OVERVIEW OF CURRENT SITUATION

Notwithstanding some small positive beginnings in the various fields influencing child welfare, as reviewed above, it is perhaps no exaggeration to say that, by and large, the situation of children, at least in the developing countries of Asia and Pacific, appears to be bleak. In the words of an ESCAP assessment:

It is a mixture of economic under-development and stagnation, rapid population growth, administrative stratification and defective centralized planning. There are also mutually causative factors which are deleterious in nature to which little thought is given in planning development. Children are exposed most to nutritive disadvantages resulting in debilities. The spread of school education among children and youth has led to rising expectations and the inability of the administration to respond to these expectations has resulted in frustration. A low rate of development and economic stagnation along with a high rate of population increase, resulting in increased unemployment and under-employment, have created political instability in many developing countries. Many of such negative interactions are the result of early fragmented development efforts. Integrated development is suggested as a solution, but integration is a process which takes time to develop.

Administrative rigidity and centralised planning are other factors that

come in the way of development of programmes for children. Most of the administration in developing countries is so constituted that the system is unrelated to the needs of the vulnerable groups, including children and subsistence families. The programmes remain counterproductive and, at best, confer a few peripheral benefits. Although programmes of nutrition, maternal and child health, education and welfare are no doubt directed to the development of the child, their content as well as coverage remain marginal, especially for the low-income group of families that need them the most. Many a time these are meant to maintain a public image of administration through a token measure....

This leads to the requirements of a radical restructuring of national systems instead of gradual reform. How could more equitable distribution of the fruits of development be ensured among children of subsistence families?

Only recently, participation of people in policy-making, planning, development (is) conceived as a solution. Even 'conflict confrontation' without violence has been suggested as a measure for stimulating participation of people in development and for forcing the hands of administration. It is assumed that the participatory approach would emphasize the need for the individual to develop the ability to analyse his own situation in the community and to take action to attain self-defined goals.<sup>6</sup>

Such a solution may be valid for adults. But for children, it is not. Since they are young, inarticulate and vulnerable, it is evident that corrective action of the existing development situation, including its imbalances, must be initiated on their behalf by adults. In this task, there are the inevitable challenges and dilemmas arising from competing priorities, budgetary and other constraints, and conflicting ends.

### PLANNING

Much of the defect in existing planning arises from the tendency to rely on national averages which are highly misleading, and which leave out practical consideration of regional demographic and socio-economic disparities. The challenge is to find ways in which, continuously, the course of national development and planning is closely matched, modified or amended, to reflect the needs of those sections and groups in the population that are recording wide variances from the aggregate national scene. In developing adequate methodologies for such 'course correction and modification', one challenge

<sup>&</sup>lt;sup>6</sup>ESCAP, "Appraisal of Achievements and Shortfalls of Social Development Objectives of the 2nd United Nations Development Decade". (Docu. E/ESCAP/SD.2/13-dated 21 November, 1978), pp. 26-27.

<sup>&</sup>lt;sup>7</sup>This refers to regions within a country.

is to examine whether such typologies could not be developed, applied, and refined on a multi-country basis. If such a search is accepted as a common commitment by member countries in the region, this would certainly amount to grappling with an 'international' rather than a 'national challenge'.

### **IMPLEMENTATION**

Under implementation, the challenge we have in mind is common not only to child welfare or to social services as a whole, but to the entire field of socio-economic development. This is the challenge of effective and timely delivery of a service to the needy clientele. It is also the challenge of tailoring a package of services to the composite needs of a widely varying clientele. Finally, it is the challenge of gearing a basically fragmented, sectoral machinery to deliver integrated cross-sectoral services, with all the accompanying problems and challenges of coordination.

Whatever the professed goals or objectives of child welfare it is clear that the majority among the developing countries is far from achieving hundred per cent coverage of the needy child population. Existing services, whether in health, nutrition, education, social welfare, recreation or other, generally affect only a fringe of the younger population. As the experience of these countries has revealed, the entire theory of percolation in development planning has failed, and questions such as how to make the delivery system mobile to reach the unreached, and how to reach the service to the doorsteps of the homes of children have emerged as the more pressing concerns.

In many instances, colonial administration has not proved itself sensitive to the developmental or participatory orientation of present day democracies. In some cases, it appears that systems which were created with a goal have, with lapse of time, become the goal, creating miles of red tape and shutting out people from their purview in the process.

Another constraint on implementation is that arising from lack of resources. The fact that resources of the required magnitude can never really be mustered up only helps worsen the gap between the norm and the reality in the coverage of child welfare services. It is evident that new methods of service delivery as well as standards have to be evolved in order to bridge this yawning gap between the service and the beneficiary.

### MANPOWER

In manpower the challenges are fairly explicit. In planning for child welfare, we are talking of a client-based and a client-pivoted service. The front line of child welfare worker thus has to be the parent or the guardian of the child himself. In other words, not only must the service in this sector be community based, but it must deeply and closely involve the family of the child in the implementation, utilisation and planning of the service. This puts

great pressure on current training institutes and others to evolve training methods and programmes whereby to involve the community and the family in the running and management of child welfare services.

Along with the family, there are twin challenges also of developing paraprofessional and volunteer cadres in sufficient quantities, and with sufficiently integrated (rather than segmented) training. Effective placement and deployment of trained staff, whether volunteer or otherwise, is another challenge posed before the manpower planner in this field.

### Landmarks in Child Welfare Movement in India

The first children's organisation, with child membership, called *Balkanji Bari*, with headquarters in Bombay, was formed by 1920.

In 1924, the Guild of Service started its child welfare services in Madras and other parts of South India.

In 1927, the Children's Aid Society, Bombay, took vagrant children into residential care.

In 1952 the Indian Council for Child Welfare was formed.

In 1956 the Central Social Welfare Board was established.

In 1974 the National Policy for Children was approved by Parliament.

The National Children's Board was constituted in 1974 under the chairmanship of the Prime Minister.

The National Children's Board was reconstituted by a Resolution of the Ministry of Education and Social Welfare in February 1978. India participates in the International Year of the Child, 1979.

# Manpower and Training Requirements for Children's Services

### Mandakini Khandekar

VERY RECENTLY the Public Accounts Committee of the Lok Sabha submitted its 128th report.\* The target of its criticism was the integrated child development scheme (ICDS). 'Too ambitious' was its verdict and it advised the organisers to prune the scheme commensurate with the limited available resources in both money and personnel. At the time of writing this paper, the full report was not available but *The Hindustan Times* in its issue of 24th April 1979 had featured the substance of the report.

It will be readily granted that the Public Accounts Committee does have a point here though we might not agree with its other observations. We do see that many programmes fail to make any appreciable impact on problems they are meant to encounter. One reason is that they have inadequate staff and remain small when their coverage should be extensive because of the continental size of our country if not for anything else. Instead of keeping projects to small proportions, we should see how they could be expanded once they are past the experimental stage.

Research studies too highlight the problem of inadequate manpower for welfare services.<sup>1</sup>

The time has, therefore, come when a wide ranging survey of training facilities should be undertaken. And its scope should extend far beyond the availability of trained social workers; other categories too should be covered. Simultaneously, manpower needs of children's services in the 1980s should be assessed. In the case of training which has a limited focus, such as training for teachers of the blind, the survey and the assessment can very well be coalesced together. For certain other training, such as for child development services or social work, two separate though coordinated exercises might be necessary.

The purpose of this paper is to discuss some important preliminary questions concerning training and manpower surveys. It does not attempt to

\*Please turn to the Book Review Section for the review of this report.

<sup>&</sup>lt;sup>1</sup>Central Social Welfare Board, *Orphanages in India* (a study), New Delhi, Central Social Welfare Board, 1974; and Ramachandran, P., *Social Welfare Manpower in Greater Bombay*, Bombay, Somaiya, 1977.

raise issues concerning manpower policies because we do not as yet have adequate data on the basis of which issues could be discussed. Similarly, the paper does not probe the contents and methods of training for different services though their study is suggested.

Only four broad areas are chosen and they are:

- 1. Agency for Conducting Survey,
- 2. Training Strategy for Some Newer Programmes,
- 3. Nature of Regional Institutions, and
- 4. Manpower Assessment.

It is assumed here that there should be a meaningful framework for the proposed survey and assessment. The implicit assumption is that the two are needed and urgently so. The issues could be seen against the background of situations in different parts of India. Their problems could be highlighted. An issue has two or more sides to it. At times, we might fail to mention all of them.

The title of the paper would suggest that the section on manpower would be taken up first. However, this is taken up towards the end. This is so on account of the way the paper has been developed which is geared to the first two tasks suggested above.

### AGENCY FOR CONDUCTING SURVEY

If it is necessary to survey the training facilities and get a measure of the future personnel requirements, one of the first practical questions would be: 'Who should be given the assignment?' Suitability of the selected agency for the assignment would be an important consideration. The question seems to have many answers. For a good perspective on the issue we may first of all indicate the tasks that will have to be done.

Since services are meant for children in need of them and training programmes are intended to equip the functionaries with the knowledge, skills and techniques required in giving the services, we might have a look at the various categories of:

- (i) children who need services,
- (ii) services, and
- (iii) training institutions.

The lists are given as appendices A, B and C and when seen together can act as aids in classifying existing and newer training programmes, extending the scope of the existing services and planning for newer ones. Here, it is taken for granted that a number of services can be given to each category of children. Indeed, it is this which lies at the base of the concept of integrated

services. When we visualise newer (newer in Indian context) services, such as day care for handicapped pre-schoolers, we would have to consider their implications for training programmes as well.

We have endeavoured to make these lists as exhaustive as possible. Even so, other categories which do not find a mention could be pointed out. Here, a distinction could be made between a service as such and the category to which it belongs. Categories, not particular services, need to be added.

A training institution should be differentiated from a training programme. The latter would be more relevant for our consideration. However, their complete documentation is lacking. Hence the need for the present task. The list of institutions could be taken as the first stage in the process of compiling an inventory of training programmes which could be in the following format:

Types of Training Institutions	Titles of Training Programme Relevant	In-take capacity of Training
Names and Addresses	to Children's Services	Programmes in the Selected Year
(1)	(2)	(3)

For col. 1, Appendix C could be used. So far as col. 2 is concerned, the listing at this stage should be irrespective of whether the training programmes are generic or specialised, uni-disciplinary or multi-disciplinary.

The amount of work to be done would vary from one type of institution to another. The Second Review Committee for Social Work Education in India appointed by the University Grants Commission has compiled useful recent data on schools of social work in India.<sup>2</sup> Similarly, some work might have been done in certain other fields.

In regard to col. 3, it may be noted that in the case of broad-based training, such as social work, for example, data on in-take capacity would be only broadly indicative since all graduates might not go in for jobs in children's services.

<sup>&</sup>lt;sup>2</sup>University Grants Commission, Draft Report of the Second Review Committee for Social Work Education in India (Mimeo.), 1977.

Once a broad survey of training facilities is done, the second stage of work would begin. An examination of their contents, methods and organisation could be taken up. Of necessity this task must be divided into some major areas which, it is suggested, could be as follows:

Training programmes for functionaries of services for:

- (a) The normal child in the community,
- (b) The normal child in residential care,
- (c) The delinquent child, and
- (d) The handicapped child.

Since training programmes are in terms of not only knowledge, skills and techniques but also of different categories of functionaries, the following could be kept in view:

- 1. Personnel giving direct services:
  - (a) Generalists, and
- (b) Specialists;
- 2. Supervisory staff;
- 3. Planners, policy makers, administrators;
- 4. Training and research staff; and
- 5. Voluntary workers.

The issue here would revolve around the agency to undertake the three tasks. Should the State directorates of social welfare (and corresponding authorities in Union Territories) be asked to come forward or should some research or training institutions be entrusted with the work? Or, could it be that the overall assignment is better divided into a few major service areas and handed over to different agencies? For example, some service organisation for the mentally retarded could take up training programmes in its field.

Should the choice be for the third option, a number of questions will have to be sorted out. A few are given here:

- 1. How many and which will be the major areas in which children's services in Appendix B can be grouped?
- 2. What criteria should be followed in selecting service agencies?
- 3. Could some training or research institutions be an alternative?
- 4. Should the three tasks be further divided region-wise?

In the case of other options too, similar relevant questions could be raised. It is obvious that tasks 2 and 3 are the more important ones and that the first one is only incidental to them.

### TRAINING STRATEGY FOR SOME NEWER PROGRAMMES

In recent years, some new training programmes have been started, e.g., the community health workers' training scheme and the ICDS workers' training scheme. They have been designed to meet the newer needs and have not been institutionalised so far. In Maharashtra, for instance, the anganwadi workers were sent to the Bal Sevika Training Institute at Kosbad, and the Gram Sevika Training Centre at Manjri near Pune. The supervisory staff attended courses at the VTK Institute, Baroda, and at the Literacy House, Lucknow. The Institute of Child Health, J.J. Group of Hospitals, Bombay gave training to the medical officers and the ANMs. The child development project officer was sent to two places for her training—the Delhi School of Social Work and the Family and Child Welfare Training Centre, Jamia, New Delhi.

Doubtless, similar varied arrangements were made in other States as well. According to the latest annual report of the Department of Social Welfare, Government of India, the six family and child welfare training centres of the Central Social Welfare Board will be taken over by the Department for training the functionaries of the ICDS and other welfare programmes. It is taken for granted that when a new service programme is started, ad hoc training arrangements are likely to prevail for at least some time as institutionalising a training programme would not only be time consuming but also costly in the short run.

ICDS-type programmes would pose special problems. On the one hand, there is a need to vastly increase its area of coverage and a long term large scale programme would call for a full fledged custom made training programme. More so when in addition to official programme there are a number of voluntary projects akin to it. On the other hand, there is the question as to whether a programme which consists of many components each requiring a cafeteria of skills and techniques not to mention specific material support, can have all its training needs fulfilled at one place.

An issue, therefore, presents itself. Should ICDS-type programmes which should be many times their present size have, to be truly effective, their own training programmes or should the present training arrangements continue?

### NATURE OF REGIONAL INSTITUTIONS

It is seen that while some services are given or coordinated by only government agencies, some others are given exclusively by voluntary agencies. Yet some others are given by both official and voluntary agencies. The pattern varies from State to State and it must be admitted that there is much scope for variations. This is one of the results of the policy of encouraging a partner-ship between government and voluntary agencies.

More or less the same policy was followed in regard to training as well.

While the government did design training programmes such as the gramsevika training centres for specific services, it more or less depended on autonomous training institutes, universities and training programmes of voluntary agencies.

The newer trend is towards establishing government-linked national institutions. The National Institute of Public Cooperation and Child Development and the National Institute of Social Defence have been started and work is afoot for launching similar institutes for the visually handicapped, the deaf, the orthopaedically handicapped and the mentally retarded. Training teachers and other staff for services for these groups would be the major part of their activities.

Though national institutes are very important in many ways, they cannot provide the whole answe: in a big country like India. The question, then, is about regional institutes. Are they needed?

Before this question can be answered, we have to consider the fact that a number of non-official training institutions exist. But an equally important fact is that they are bound to follow their own policies and many, if not all, might want to either project or retain a national and even international image. Hence, our answer to the above question would be in the affirmative.

The issue as we see it is this: Should the regional institutes be branches of their respective national counterparts or should they be independent organisations? Or, probably this is an issue which will have to be posed separately for different types of training programmes. What might be true of, say, teachers of the blind might not be so of, say, the ICDS field staff. The regional variations in the case of the latter might be far too pronounced than in the case of the former. If the issue is resolved in favour of regional institutes, which are organisationally independent of those at the national level, a number of questions would have to be considered:

- 1. It is certain that regional institutes will have to cover more than one State. How many of them should there be and what should be the jurisdiction of each?
- 2. Should State Governments take a lead in establishing them? If so, what should be the mechanisms for ensuring mutual cooperation among the States in a given region? Or, should some voluntary agency be given the task?
- 3. As mentioned earlier, a number of autonomous bodies, voluntary agencies, universities, etc., are active in the field of our concern. What would be the ways of maintaining effective liaison with them?

### MANPOWER ASSESSMENT

At a time when one is not in a position to offer even a guesstimate as to the volume of social welfare manpower in India, we would have to do much systematic, if elementary, groundwork. While doing so, we may keep in mind the fact that the recent stress on child development has widened the scope of children's services. We have, broadly speaking, three categories of services: (i) child development services, (ii) child welfare services, and (iii) child care services. We have discussed them elsewhere.<sup>3</sup> While the distinction between the first two categories is clear, it may be noted here that child care has come to mean looking after children in institutions. Though a good deal of thought is now given to saving children from institutionalisation and also to lessening the rigours of institutional care, such care cannot be wished away. It is because of the fact that much of our early statutory child welfare work belongs to the third category and also because of its distinctive characteristics that the category is listed separately. It is, truly speaking, a sub-category of the second category. The following gives a broad overview of children's services:

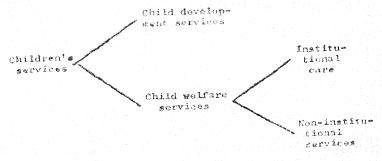


Fig. 1

Considered from another angle, services can be dichotomised as direct or indirect services. Just as understanding the nature of children's services is useful in both assessing and planning manpower requirements, it would be important to categorise the personnel engaged in giving services. A suggested model is shown in Fig. 2.

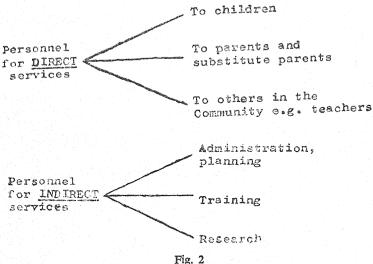
Estimating manpower requirements might have to be done in two parts: one for those giving direct service and the other for the indirect.

At the same time, it should be noted that this classification does not hypothesise any levels in the functioning of services. Questions of hierarchy per se of functions and positions are not germane to the discussion here.

Against such a background, we may spell out the two elementary tasks. In view of the fact that services are often given through the medium of programmes, structured in varying degrees, it is necessary to have programme-wise lists of various positions for which personnel is needed. Such a list based on a survey of social welfare manpower in Greater Bombay has already been compiled. To that extent, much work has been done. However, an

<sup>&</sup>lt;sup>3</sup>Khandekar, Mandakini, "Some Aspects of Manpower for Child Care, Welfare and Development," *Indian Journal of Social Work*, 39(1), April 1978, pp. 1-8.

all-India list would doubtless have more entries. More so in view of some of the newer programmes.



Simultaneously with a listing of jobs and positions, there should be jobdescriptions in order to take care of problems arising out of nomenclatures. designations, etc., which do not exactly fit the job-descriptions. Many designations remain, for various specified or unspecified reasons which at times would he quite valid, only broadly informative and might not indicate a variety of jobs which get associated with them. The format for the final statement based on this list could be as follows (the type and quantum of work needed at various stages of the proposed manpower assessment is not indicated her.):

Programme	Job	Approx. no. of	Approx. no. of
position	description	positions in the	additional positions
		State during 1979	needed during
			1981-85

The listing should be for each programme. It would have utility for the training programme: the job-descriptions could be used in making training more focussed. Newer training programmes too can be devised if needed.

The issue that would come up here would be the same as the first one mentioned earlier. Since this task itself is very big, we may limit ourselves to it. It is needless to add that agencies selected for the task would have to have a wide enough focus for doing it.

Stemming from our earlier point that services are often provided through structured or semi-structured programmes, it is suggested that their employment potential be assessed programme-wise. While doing so, the indicated staffing patterns could be reviewed critically in terms of feasibility as well as certain minimum standards of service. For semi-structured or unstructured services, the personnel policies or staffing patterns of the structured programmes could provide certain guidelines. The existing coverage of different programmes, their proposed or feasible expansions could be kept in view. In the process of performing this task, programme-wise staffing patterns would have to be compiled. Their pay-off could very well be in the form of staffing guidelines for various programmes—something worth looking forward to, even granting the need to keep them flexible.

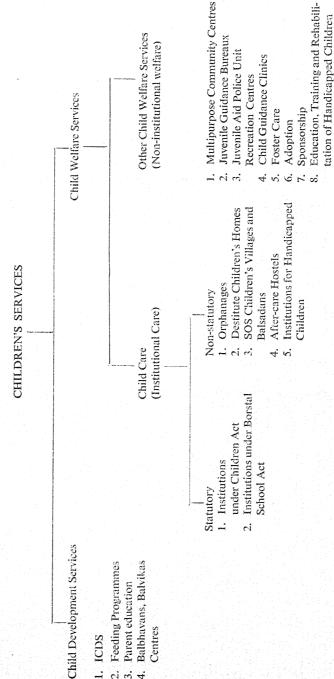
### APPENDIX A

### Children in Need of Services

- I. Handicapped Children
  - 1. Physically handicapped
  - 2. Mentally handicapped
  - 3. Socially handicapped
    Under this head, we have numerous groups each suffering
    from a distinctive handicap or problem. At times, there is a
    clustering of problems in one group.
    - (i) Orphans
    - (ii) Deserted children
    - (iii) Neglected children
    - (iv) Victimised children
    - (v) Those used for begging and other immoral and antisocial purposes
    - (vi) Children in slums
    - (vii) Children in poor families
    - (viii) Children in the socially exploited classes such as the Harijans, Girijans, industrial labour, etc.
- II. Children with behavioural problems or the emotionally disturbed children
- III. Physically ill children
- IV. Children who fail to benefit from school and other social utilities
- V. Delinquent children
- VI. Children of deviant or handicapped parents
  - 1. Children of delinquent parents
  - 2. Children of prisoners
  - 3. Children of beggars
  - 4. Children of prostitutes
  - 5. Children of handicapped parents
  - 6. Children of broken families and so on.
- VII. Gifted children



•



4

Note: The chart is wide ranging but not exhaustive.

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### APPENDIX C

# Types of Training Institutions

- 1. Schools of Social Work
- 2. Colleges and Departments of Child Development
- 3. Departments of Psychology (Child Psychology)
- 4. Colleges and Departments of Education
- 5. Institutions of Teacher Training
- 6. Institutions of Preschool Education
- 7. Institutions of Preschool Teacher Training
- 8. Medical Colleges
- 9. Departments of Psychiatry (Child Psychiatry)
- 10. Colleges of Nursing
- 11. Departments of Nutrition in
  - (a) Medical Colleges
  - (b) Universities
  - (c) Other Institutions
- 12. Balsevika Training Centres
- 13. Gramsevak, Gramsevika Training Centres
- 14. Teacher Training for Teachers of the
  - (a) blind,
  - (b) deaf,
  - (c) spastics, and
  - (d) mentally retarded
- 15. Institutes of Public Administration, Social Welfare Administration

16. Department of Extension in Agricultural Colleges or Universities

# Law and the Child in India

S.N. Jain

WE DO NOT have a comprehensive single code to deal with all the necessary aspects of child protection and welfare. Child is the subject matter of numerous enactments—a number of which have provisions, amongst others, for the child, e.g., the Factories Act, 1948 or the Indian Penal Code; but a few deal exclusively with the child, e.g., the Employment of Children Act, 1938 or the Children Act, 1960. The number of statutes containing provisions relating to the child are very many.

The British rulers were hardly concerned with the welfare of the people of India and had the least policy of regulating the human conduct or protecting the individual or providing for his welfare. Consequently there were not many laws concerning the child before independence, and whatever few laws there were, they were the result, by and large, of the ILO conventions to which India was a party.

After independence the country is committed to the welfare state and this policy is well ingrained in the directive principles of state policy of the Constitution. A few articles specifically provide for the protection and welfare of children Article 15(3) enables the state to make special provisions for women and children. Article 24 provides: 'No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment'. Clauses (e) and (f) of Article 39 provide that the state shall direct its policy towards securing, 'that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength' and that 'children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment'. Article 45 provides: 'The State shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years'.

### NATIONAL POLICY AND AFTER

In 1974 the Government of India adopted the national policy for children.

## It provides that:

The nation's children are a supremely important asset. Their nature and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

### The resolution further states:

It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth.

All this calls for a great deal of legislative activity. The subject of 'child' does not fall exclusively either in the Union (Central) or State field. The innumerable facets of child behaviour, child welfare and his relationship with others come within the sphere of both the Centre and the States (either exclusively of each polity or concurrently of both). Accordingly, there are both Central and State statutes on the subject. A survey of the statute book reveals that there are over 250 Central and State statutes concerning children. The necessity to have all these plethora of laws may not be overemphasised. Without the basic foundation of good laws the various measures and programmes relating to children may not succeed, some of them even may not emerge, though law, it may be cautioned, is only one of the elements in the development and implementation of these schemes and programmes. Equally important alongwith the enactment of the laws is their effective administration. The idea of this small paper is to give a bird's eye view of these laws and not how they are being administered. It is hoped that in this International Year of the Child some institution will launch a research project on the administration of the child laws.

A broad classification of the laws relating to children are as follows: labour welfare; family law (such as marriage, legitimacy, guardianship, maintenance, adoption); criminal law including reformatory services, probation, children homes, suppression of immoral traffic; child welfare including prevention of vagrancy and beggary, child education and health; tortuous and contractual liability of children, etc. We have a surfeit of laws dealing

with children. Apart from minor deficiencies here and there, the statutes are basically adequate.

### LABOUR WELFARE

One of the important aspects of child development and welfare is the employment of children in various avocations. There are both Central and State enactments on child labour—the former covering mainly employment in industries and mining, and the latter covering shops and establishments. At the international level there are ILO conventions and recommendations. India is a party to the ILO and as such has an obligation to adopt the ILO conventions. India has ratified several ILO conventions. Some of the conventions have special provisions for countries like India; these lay down lower standards than those to be followed by developed countries. In the matter of labour laws relating to children, India tries to follow the standards set by ILO conventions. So far the ILO has adopted 18 conventions and 16 recommendations bearing on children.

The Indian laws and the ILO conventions mainly deal with four matters: (i) minimum age for employment of children; (ii) medical examination of children; (iii) maximum hours of work; and (iv) prohibition of night work for children.

There are several enactments which deal with the above four matters, e.g., the Factories Act, 1948; the Mines Act, 1952; Employment of Children Act, 1938 (concerned with employment of children in hazardous occupations, such as transport of passengers, goods or mail by railway, or by a port authority within the limits of a port, or workshop wherein is carried the process of beedi-making, carpet-weaving, cement manufacture, cloth-printing, dyeing and weaving, manufacture of matches, explosives and fire works, mica-cutting, shellac manufacture, canning, etc.); the Merchant Shipping Act, 1958; Motor Transport Workers Act, 1951; Plantations Labour Act, 1951; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and the State Shops and Establishments Acts covering such employment as in shops, commercial establishments, restaurants and hotels, and places of amusements in urban areas.

It is not possible here to mention the details of the provisions of all these enactments, but the provisions of the Factories Act may be stated here. The Act prohibits employment of children below 14 years in any factory. Children above 14 years and below 18 years may be employed subject to a few restrictions. They are to obtain a certificate of fitness from a certifying surgeon. Children below 17 years cannot be employed at night. A child between the age group 14 and 15 cannot be employed for more than 4 hours in any day, and he cannot be employed in two shifts and cannot be allowed to work in more than one factory on the same day. The Act makes provisions for penalties for contravention of its provisions. An employer is punishable with

imprisonment for a term up to three months or a fine up to Rs. 500 or with both. Penalty can also be imposed on a parent or guardian for permitting double employment of a child. The Factories Act applies only to factories which employ a minimum number of ten persons where a manufacturing process is being carried on with the aid of power or twenty persons where it is being carried on without the aid of power.

The other statutes also prohibit employment of children below a certain age and regulate their employment above that age. There are, however, variations with respect to several matters—age of employment, hours of work, medical examination, etc. For instance, provisions of the Mines Act with respect to employment of children are more stringent than the Factories Act, but they are less strict in the case of employment in shops and establishments.

There is the Apprentices Act, 1961 which regulates the training of apprentices in industry so that the programme of training may be organised on a systematic basis and the apprentices may get the maximum advantage of their training. The Act prohibits engaging children below 14 years as apprentices.

The survey shows that the legislature has duly kept in view the welfare of child labour and prohibits employment of children below a certain age in different occupations. However, the laws are deficient as compared with the international standards as laid down by the ILO. Some of the reasons for this are economic backwardness necessitating a family to seek employment for children, lack of educational facilities and the unorganised nature of some of the economic sectors and the small size of the manufacturing units, making enforcement of the laws difficult. Thus, for employment of children, the various ages prescribed for different occupations are lower than the ILO standards. We do not have a law for agriculture labour. Smaller factories employing workers below a certain minimum are left uncovered by law. The same is the position with regard to medical examination. We do not have laws with respect of medical examination of children in non-industrial occupations, establishments which are not factories, establishments engaged in transport, and mines above ground. Further, the age up to which medical examination is required in factories and mines is less than the ILO standards. With regard to night work also our provisions are less stringent than those laid down by the ILO conventions.

### CHILD WELFARE

In a broad sense child welfare refers to all those measures which lead to the proper development of the physical, social and psychological conditions of the child. Many of the welfare programmes, such as nutrition programmes, child development services, holiday camps, voluntary orphanages, etc., do not require the support of the law. These programmes depend upon the availability of economic resources. Law steps in only when it imposes compulsion on

the administration or other agencies to take compulsory action in the interest of the child, or restrict the liberty of the child by prescribing certain standard of behaviour and providing remedial measures in case of deviation. The major concerns of the law are with regard to treatment and rehabilitation of neglected, destitute, victimised, delinquent and exploited children; primary education for children; and child health in a limited respect. A few of these matters are dealt with under the section on criminal law below.

To provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children, there is the Central Children Act, 1960 which applies to the Union Territories. Besides this enactment, States have their own Children Acts.

Under the Central statute a child means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18. There are State variations with regard to the definition of a child in relation to this age.

The scheme of the Central Act with regard to the treatment and care of children may be briefly mentioned here. The statute makes a distinction between neglected and delinquent children. A neglected child is one who is found begging; or who does not have a settled place of abode or ostensible means of subsistence; or who is found destitute, whether orphan or not; or whose parent or guardian does not exercise proper care and control over him; or who lives in a brothel or with a prostitute or is found to associate with any person who leads an immoral, drunken or depraved life. The Act provides for the establishment of child welfare boards to investigate the problems of neglected children and to formulate treatment plans. Any police officer, or an authorised person, who is of the opinion that a child is apparently a neglected child, may take charge of such a child and is required to produce him before the board within 24 hours. The child, unless he is kept with his parent or guardian, is to be sent to an observation home until he is brought before the board. After an enquiry, the board may either order the release of the child or order him to be sent to a children's home for a period till he ceases to be a child. Instead of passing the latter order, the board may place a neglected child under the care of a parent or guardian or other fit person on his executing the necessary bond. The board may commit a child suffering from a dangerous disease to an approved place for treatment.

There are a few differences between the Central statute and some of the State statutes. The differences are: instead of the child welfare board, the child may be dealt with by a juvenile court; the child may be sent to the remand homes during the enquiry and certified schools on the conclusion of enquiry.

Under the Central Act, the procedure for dealing with delinquent children is the same, except that instead of the child welfare board, it is the juvenile court which deals with them. Further, after the decision of the court, a child is to be sent to a special school for delinquent children instead of the children's home. Thus there are separate institutions for delinquents and non-delinquents which is salutary.

The Central Act also makes provisions for after-care organisations after the child has left the children's home or special school. This is very necessary for if proper follow-up action is not taken to rehabilitate children, the idea behind creating special institutionalised services to deal with neglected and delinquent children may largely be lost.

The Central and the State statutes provide for licensing out of inmates of children's homes and special schools. The purpose is to enable the child to live with a responsible person for purposes of educating him and training him for some useful trade or calling.

The children statutes also provide for protection of children against victimisation. Thus the Central Act provides for punishment of those who, having a control over the child, assaults, abandons, exposes or wilfully neglects him in a manner likely to cause him unnecessary mental and physical suffering.

Several State children's statutes provide for punishment to those persons who induce girls to lead an immoral life or who behave immorally with girls. As stated earlier, under the Children Acts (Central and State) a 'neglected child' includes a girl who lives in a brothel or with a prostitute. Apart from these provisions, there is the Suppression of Immoral Traffic in Women and Girls Act, 1956 (known as SITA). It is a Central statute which applies throughout India. The Act has several provisions aimed at suppressing the vice of immoral traffic in girls and women. Besides providing for punishment to those who facilitate the carrying on of this vice, the Act makes provision for establishing protective homes for rehabilitating fallen girls and women.

In addition to the Children Act dealing with child beggars, the States have also separate beggary statutes. For example, the Bombay Prevention of Begging Act, 1959 provides that if a child above 5 years is found begging, the court before which he is brought is required to send him to a juvenile court. From then onwards, the provisions of the Bombay Children Act apply.

A bill entitled the Children, Students and Youth (Rights and Welfare) Bill, was also introduced in 1975 in Parliament for establishing a board to safeguard the rights of children, students and youth and to look after their welfare.

Education: Article 45 of the Constitution, as stated earlier, casts an obligation on the state to provide for free and compulsory education for all children until they complete the age of 14 years. As education is a State subject, the States have enacted the necessary legislation to that effect. The Central Government prepared a model draft Bill for compulsory education to be adopted by the States. In 1960 Parliament enacted the Delhi Primary Education Act. Several States have been modelled on the Delhi Act. Under the Delhi Act the primary responsibility to create facilities for free primary education is on the local authorities. 'Primary education' means education up to such class or standard not beyond the eighth class or standard as may be prescribed The Act provides for the imposition of a nominal fine on parents

for their failure to send the child to school without reasonable excuse. The Act also prohibits persons from employing a child which will prevent him from attending an approved school. Primary education under the Act is free.

Health: The two matters pertaining to health which are being dealt by law are smallpox and smoking. The Central Vaccination Act, 1880 provides for compulsory vaccination of children and adults. No fee is to be charged except by a private vaccinator. The various State statutes are modelled on the Central Vaccination Act.

As smoking of tobacco is dangerous to health, there exist Acts in the various States to prevent children from smoking and to punish those who encourage them to smoke.

#### CRIMINAL LAW

There are special statutory provisions in relation to crimes committed by children both in respect to substantive and procedural aspects; and also in relation to crimes against children. The basic statutes in this area are the Indian Penal Code (IPC), the Criminal Procedure Code (Cr. PC) and the Children Acts, apart from a few statutory provisions in special enactments like the SITA.

Keeping in view the inadequate mental development of children, the IPC provides that 'nothing is an offence which is done by a child under 7 years of age'. Further, under the Code, a child above 7 years and below 12 years may not be said to have committed an offence if he lacks sufficient maturity or understanding to judge the nature and consequences of his conduct with regard to the particular thing which he has done. SITA was enacted to stop the vice of commercialised prostitution. The main thrust of the law is against keeping and managing of brothels and other incidental matters like penalising persons to aid and promote the running of prostitution as a business. Under the Act girls engaged in immoral traffic as such are not punishable. A girl or a woman prostitute is, however, punishable where prostitution is carried on in any premises within the distance of 200 yards of any place of public religious worship, educational institution, hotel, hospital, etc.; or when she makes a positive attempt to seduce or solicit persons for purposes of prostitution. The Act also punishes persons including a girl or a woman for keeping a brothel or for procuring or inducing women or girls for prostitution. A provision which has the effect of preventing a girl under 16 years not to indulge in prostitution is S.375 of the IPC which provides that a person having sexual intercourse with such a girl with or without her consent shall be guilty of rape.

The Child Marriage Restraint Act, 1929 (the Sharda Act) prohibits marriages between a male below 21 years and a female below 18 years of age. The Act provides punishment for a male between the age of 18 years to 21 years and above if he contracts a marriage with a female child.

The Children Act read with the Cr. PC Code prescribes a special procedure for detaining and trial of a delinquent child. Section 27 of the Cr. PC 1973 provides that a person under the age of 16 years, committing an offence not punishable with death or imprisonment for life, brought before the court, may be tried by a juvenile court under the Children Act. It thus means that a child below 16 years is ordinarily to be tried by a juvenile court and not by ordinary court, except when the offence is punishable with death or imprisonment for life in which case the procedure will be the same as prescribed for others by the Cr. PC. Several State Children Acts foreclose the option of the court in this regard and require that a child delinquent shall be tried by a juvenile court, except where the offence is punishable with death or imprisonment for life. The Children Act, 1960 specifically provides that no child is to be tried jointly with an adult.

While arresting a child delinquent it is the ordinary criminal justice process which comes into being. Thus, it is the police who excerise the power of arrest in such a case, but there are liberal provisions with regard to the bail of children. S.18 of the Children Act, 1960 requires that a child delinquent is necessarily to be released on bail whether he is accused of a bailable or non-bailable offence, unless there are reasonable grounds for believing that the release is likely to bring him into association with any reputed criminal or expose him to moral danger or his release would defeat the ends of justice. So long as a child is not released on bail he is not to be kept in a police station or jail but in the observation home.

For child offenders the punishment of imprisonment is not to be used. The court may pass any of the following orders against a child committing an offence: advice or admonition; to be sent to a special school; to be placed under the supervision of a probation officer; to be placed on probation of good conduct under the care of parent, guardian or any fit person; imposition of fine; to be kept in safe custody in a prescribed place.

The IPC and a few other laws provide for offences against children for purpose of their protection and welfare. The IPC creates the following offences against children: causing of death of a living child, if any part of that child has been brought forth; concealment of birth by secret disposal of the body of a child with an intentional view to withhold the disclosure of the birth of the child from the world; exposing a child below twelve years to physical risk or deserting it with the intention of abandoning it by the parent or any such person having the care of the child; kidnapping from lawful guardianship; kidnapping or maiming a child for begging; selling a child for purposes of prostitution, etc.

SITA prescribes punishments to persons engaged in promoting the evil of prostitution. The Child Marriage Restraint Act, 1929 provides for punishment for persons connected with the performance of child marriages. The Young Persons Harmful Publications Act, 1956 prescribes punishment for publication and distribution of materials harmful to children. And the

Children Act, 1960 makes such matters as cruelty to children, exploiting them, using them for begging, etc., as punishable wrongs.

#### FAMILY LAW

The law relating to family law is quite complex in India since, basically, it is personal laws of the different communities which are applicable in the matter of family relationship. The major communities are the Hindus (which term includes Budhists, Sikhs and Jains), Muslims, Christians and Parsis. In the case of the Muslims, it is primarily the traditional law which applies and which is based on religion except for minor modifications here and there. The Hindu law has been codified. So also the Christian and Parsi laws have been codified in relation to marriage. There are, however, a few statutes which apply to all the communities, e.g., the Child Marriage Restraint Act, 1929.

Family law is concerned with such matters as marriage, legitimacy, guardianship, adoption, and maintenance.

Marriage: The laws of all the communities discourage child marriage. The Sharda Act prescribes the minimum age for marriage for a boy to be 21 and for a girl to be 18. The Act prescribes penalties for its violation; but a marriage solemnised contrary to its provisions is not invalid. For finding out the validity of child marriages, one has to look to the personal law of the parties. The various personal laws vary in this regard. For instance, under the Hindu Marriage Act, 1955 such a marriage is neither void nor voidable; under the Muslim law it is voidable at the option of the girl; under the Parsi law it will be invalid unless the consent of the guardian has been obtained, etc. There is also the Special Marriage Act, 1954 under which the parties belonging to any community may solemnise the marriage. The Act prescribes the minimum age for marriage of a boy as 21 and for a girl as 18. The marriage solemnised without fulfilling the age requirements of the Act is void.

Legitimacy: The Indian Evidence Act, 1872 determines the question whether a child is legitimate or not. It applies to all the communities. According to its provisions, the criterion for legitimacy is not conception but birth during the marriage. The section provides: 'The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties had no access to each other at any time when he could have been begotten.' The section comes into operation when the marriage is valid. The legitimacy of the child of an invalid marriage is determined by his personal law.

The personal law of the Hindus is the most liberal with regard to the legitimacy of children born of invalid marriage. Thus, the Hindu Marriage Act, 1955 regards such children to be legitimate whether marriage is annuled by

the court or not. Under the Muslim personal law, such children are generally regarded as illegitimate except where the marriage is only irregular (fasid). The provisions of the Special Marriage Act are the same as those of the Hindu Marriage Act. The Parsi and the Christian laws of the subject are silent.

As regards the disabilities of illegitimate children the position is as follows. Under the Hindu Marriage Act a child of an invalid marriage, though legitimate, succeeds only to his parents' property but not of other relations. An illegitimate child under the Hindu and Muslim laws has a right of inheritance from his mother but not father. Under the Indian Succession Act, 1925 which applies to Christians and Jews and also to persons governed by the Special Marriage Act, 1954, the position is that an illegitimate child has no right of inheritance from his parents.

Under the Hindu Adoption and Maintenance Act, 1956 both the parents are liable to maintain their illegitimate children. Further, under the Cr.PC, 1973, which applies to all the communities, a putative father of an illegitimate child is liable to maintain him.

Guardianship, Adoption and Maintenance: To protect the interest of minors, there are laws making provisions for appointment of guardians of minor's person and minor's property. The basic statute on the subject is the Guardians and Wards Act, 1890. This statute exists side by side with the personal laws, but it prevails over the personal law if there is a conflict. Under the Act an application can be made to a court for appointing a guardian of a minor. In appointing a guardian by the court the paramount consideration is the welfare of the child and in this connection the court is to give due regard to the personal law of the minor. The Act thus gives weightage to the personal law of the minor in the matter of appointment of the guardian.

Only amongst the Hindus the law permits adoption, except that in the case of other communities, custom may permit adoption. But no such widespread custom of adoption amongst other communities seems to exist in India. The basis of adoption among the Hindus is ingrained in their religion. At present the adoption amongst this community is governed by the Hindu Adoption and Maintenance Act, 1956. Even this statute is outmoded in the sense that it is parent-based and the religion is the governing factor. The motivation for this Act is not the interest of abandoned or destitute child but that of the parents wishing to adopt a child. In 1972 a Bill called the Adoption of Children Bill did happen to be introduced in Parliament. It was to be a secular law of adoption and to apply to all the communities. As opposed to the Hindu adoption statute, the Bill was child based and provided adequate safeguards in the interest of the adopted child. However, due to the opposition of the various communities, particularly the Muslims, the Bill was ultimately withdrawn by the Government in July 1978. This is most unfortunate.

We have a secular law of maintenance, and also personal laws dealing with maintenance. S.125 of the Cr. PC 1973, which applies to all the communities, provides that if any person having sufficient means neglects or refuses to

maintain his legitimate or illegitimate minor child (whether married or unmarried) who is not able to maintain itself, he may be ordered by a magistrate to make a monthly allowance to such child at such monthly rate not exceeding Rs. 500 in the whole. The idea behind this provision is to provide an expeditious remedy to the person concerned and also to impose sanctions against the person liable to provide maintenance so that he duly complies with the order of the court. Under the provision only a maximum sum of Rs. 500 per month can be awarded. Under the Hindu Adoption and Maintenance Act, 1956 every Hindu, whether father or mother, is bound to maintain the minor children (legitimate or illegitimate). There is no limit prescribed as to the amount of maintenance except that the court, while making an order of maintenance, is to take into account the reasonable wants of the claimant, his position and status of the person's own resources, and the position and status of the person liable to provide maintenance. The Hindu Marriage Act, 1955 also gives power to the court to pass suitable orders for the maintenance of a child while granting various matrimonial reliefs. Several marriage statues—the Special Marriage Act, 1954, the Parsis Marriage and Divorce of Marriage Act, 1936 and the Indian Divorce Act, 1869—have somewhat similar provisions as contained in the Hindu Marriage Act. In the matter of maintenance of children other than cases involving matrimonial relief, the Parsis and Christians are governed by the Cr. PC. Muslims are governed by their own religious law in the matter of maintenance. Thus a Muslim father is bound to maintain his son till he obtains puberty and his daughter till she gets married. If the father is poor it is the mother who has to fulfil this obligation. However, the father under the Muslim law has no obligation to maintain his illegitimate child. But in the Hanafi law a mother has such an obligation towards the illegitimate child.

#### MISCELLANEOUS

Under this heading a brief mention may be made of such topics as minor's agreements, torts and children, child's testimony, and suits by and against minors.

Minor's agreements are governed by the Indian Contract Act, 1872. The law tries to reconcile two conflicting positions—a minor has to be protected against unconscionable contracts which he may be led to enter due to his immaturity, but a minor has to have his existence and so some protection has to be extended even to minor's agreements. Under the Indian Contract Act minor's agreements are void and cannot be enforced against him. However, minor's contracts for necessaries are not void. The minor's estate is liable for such contracts, though he is not personally liable.

The voidness applies to minor's agreements which are executory (that is, where both the minor and the third party have to perform their part of the contract), even though a contract is beneficial to the minor. But thit is not

entirely true in the case of executed contracts. In some situations, it has been held by the courts, the minor can be a promisee (a situation where the minor has performed his part of the contract). Further, in some situations the law permits restitution of the benefit received by the minor to the other party and vice versa, though the contract is void.

A guardian can step in to supplement the minor's incapacity to contract, otherwise the minor's property may suffer. The law permits a guardian to act on behalf of the minor for sale or purchase of property, subject to certain restrictions so as to guard against abuse of power and exploitation of minor's property.

The law of torts is essentially a judge-made law. The law of torts, unlike the law of contracts, does not draw a sharp line of demarcation between a child and an adult. A child is liable for the tort committed by him as an adult person, except where liability depends on some special mental element like malice or fraud or where reasonable conduct is involved. Similarly, where tort is committed against the child by a person and the issue involved is that of contributory negligence of the child, the age and mental development are taken into account by the courts in determining contributory negligence. Under the Fatal Accidents Act, 1855, a child has a right to sue for the loss occasioned by the death of his parent as a result of an actionable wrong within the meaning of the Act.

A child is a competent witness under S. 118 of the Indian Evidence Act, 1872, unless the court considers that he does not understand the question or is unable to give rational answers by reason of his tender years. However, no oath can be administered to a witness who is a child under twelve years of age. The weight to be attached to the testimony of a child will depend upon such factors as the tender years of the child, mental development and understanding, consistency of evidence, likelihood of tutoring, etc.

The law safeguards the interests of the minor in the matter of civil litigation. Order 32 of the Civil Procedure Code deals with suits by or against minors. No proceeding in a court can be initiated by a minor without a next friend. Similarly, a suit can be filed by a person against a minor only through the guardian of the minor.

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# Laws Relating to Children

# S. Venugopal Rao

IT IS a characteristic feature of our times that awareness of deep-seated social maladies emerges, and that too fleetingly, only when public attention is drawn to them through observance of years, weeks and days. The International Year of the Child may not, therefore, move any mountains in regard to the welfare and protection of nearly three hundred million children below the age of fourteen in India, but it has projected the gigantic dimensions of the problem, exposed the wasted efforts of three decades since independence and highlighted the complexity of the tasks that lie ahead of us. Nowhere are indecision and ineptitude so revealing as in the administration of laws relating to children wherein the failure to evolve a national policy and a suitable administrative machinery for implementation reflects the deplorable limits of societal apathy.

Yet, juvenile legislation is not new to India. The beginnings of such legislation can be traced as far back as 1850 when the Apprentices Act provided a skeletal infrastructure for the control of delinquent children between the ages of ten and eighteen. The Reformatory Schools Acts of 1876 and 1897 envisaged the creation of institutional facilities for the care of delinquent and neglected children. The Indian Jails Committee (1919) bewailed the mixing up of delinquent children with adult criminals and demanded elimination of imprisonment of children. Children Acts were brought on the statute books of many States, one of the earliest pieces of legislation being the Madras Children Act of 1920. Immediately in the wake of independence, there were renewed efforts beginning with the Maharashtra and Bombay Children Acts (1948). Since then, many States have enacted analogous legislation, but lack of uniformity in definitions and ambivalence in the matter of administrative machinery thought of for implementation led to the Central Act on children (1960) which is projected as a model for all States and Union Territories.

#### CHILD WELFARE LEGISLATION

The Child Marriage Restraint Act (1929) and the Children (Pledging of Labour) Act of 1933 are among the other important pieces of welfare legislation before the attainment of freedom. The Indian Penal Code (IPC) has extensive provisions intended to protect the child from exploitation and

exposure to moral and physical hazards and particular mention may be made of Section 363 A which was specifically introduced to prevent the inhuman practice of kidnapping children for purposes of begging. The Indian Constitution directs the state policy towards protection of children against exploitation and abandonment. The employment of children below the age of fourteen is forbidden, but this is applicable only to industrial establishments and leaves out the vast segment of agriculture where the child is an investment in terms of manpower to the marginal farmer and the impecunious labourer.

Welfare legislation in atradition-bound society, however benign, cannot be expected to yield immediate results. The grip of superstition and economic necessity are two major factors which outweigh rationality and law. And yet, the impetus must come from purposeful and effective enforcement with simultaneous endeavours to create a suitable climate and public opinion. The burning of child widows and female infanticide which were suppressed in the middle of the last century and the gradual abolition of child marriages in the first half of this century demonstrate that an alert public opinion has to be backed by determined enforcement. Even today, we hear occasionally of mass marriages of children in some isolated parts of the country. The hesitation which marked this legislation in the face of orthodox opposition is understandable when one recalls the reluctance of the British to suppress so barbaric a practice as sati on the ground that it would be deemed an undue interference with the religious susceptibilities of the Hindus. The offences under the Child Marriage Restraint Act continue to be non-cognisable even after the lapse of a half century of enforcement which leaves many a loophole for the determined and the ignorant. Superstition, ignorance and social exploitation are at the back of such offences which do not automatically disappear as society undergoes changes in its structure without concurrent penal action of requisite strength and determination.

All laws need goals, definitions, explanations and rules of procedure. Many of our difficulties in implementing the laws relating to children have arisen due to lack of uniformity in definitions and inability to evolve a pragmatic and uniform set of rules as if the problems of the neglected, destitute and delinquent children are widely different in different parts of the country. In the name of autonomy, a needless diversification has emerged which has no rationale. A comparative study of the Children Acts in various States reveals a major variation in the definition of the child. In some States, a further categorisation of young persons and youthful offenders with different age limits is attempted. The States' continued adherance to certain age limits as sacrosanct despite the fact that the model Act of 1960 has suggested certain limits after due consideration of the views of all State Governments is intriguing. The existence of different age limits for the definition of the child leads to administrative and investigative difficulties since they are closely linked to the type of treatment to which the child is entitled.

## GAPS IN IMPLEMENTATION

As an example of administrative inertia in the formulation of laws, the example of Andhra Pradesh may be cited. Formed in 1956 as a sequel to States reorganisation, it has two Children Acts in force—the Madras Children Act of 1920 in the Andhra districts of the erstwhile Madras Presidency and the Hyderabad Children Act (1951) in the Telengana districts. In addition, there is also the Hyderabad Children's Protection Act in the city of Hyderabad whose enforcement is entrusted to the director, women's welfare. Although it has been long recognised that the legislation reflects the distortions of a feudal society and has little relevance in the modern context, it has continued untouched by the bewildering changes that have occurred. It is now proposed to repeal the Act.

In the Andhra area, the upper age limit of a child is fourteen years while persons belonging to the age group of 14-16 are designated as young persons. The Act provides for establishment of certified schools—the junior category serving the needs of children below 14 who are not delinquent and the senior institutions being designed for the custody of children above that age limit. The concept of youthful offender is also introduced into the legislation which creates a distinct group of young people below 16 who may come to notice in criminal offences. The age limit for the youthful offenders has been raised to 18 by an amendment to the Madras Children Act in 1958 and this is applicable to the Andhra districts only while the Telengana region continues to have its own criteria for judging the age of criminal responsibility and prescribing the appropriate treatment of juvenile offenders. A series of efforts have no doubt been made to have a uniform legislation throughout the State and, at one time, a draft Bill was even sent to the Government of India for approval. It was returned with the advice that the major features of the Central Act 1960 should be incorporated therein. Once again legislative efforts are under way. That it should take more than twenty-three years to have an integrated legislation in a single state reflects the enormous confusion that has been allowed to be created in so simple a matter as child welfare.

It is a sad commentary on the state of our society that even in regard to a non-controversial area as child welfare and juvenile delinquency, there should be an endless argument as to who is a child and who is not, whether there should be discrimination among the sexes and what institutional arrangements can be thought of for the custodial treatment of neglected and destitute children. There has been no dearth of seminars and academic discussions on the emerging problem of juvenile delinquency in a rapidly urbanising society, but sophistication has inevitably made confusion worse confounded, with the scholars, policy makers and administrators pulling in different directions. It may be of some consolation that even as I write this, a Bill to amend the law for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected children and juvenile offenders and for the trial

of juvenile offenders has been prepared and will be presented shortly in the

Andhra Pradesh Assembly.

In the national context, the position is equally unsatisfactory. A few States had not even enacted Children Acts till recently; even where the formality of legislation has been gone through, the rules have not been formulated. The time gap between legislation and rule-making is so large that it gives an impression that the States Governments, except a few, are not serious about implementation. The gap between intentions and implementation makes a mockery of all legislation relating to children.

#### DISTORTED PRIORITIES

In general, Children Acts are ambitious and designed for ideal conditions. The legislation demands an elaborate administrative network and institutional machinery, following the models developed in affluent societies. The legislation calls for a parallel administrative set-up of child welfare boards and juvenile courts supported by suitable institutional facilities for different types of juveniles. Such a network depending solely on the state for upkeep and development swallows the bulk of funds allocated for rehabilitation programmes. Administrative inhibitions and red tape are inevitable in such a system. Even so, there is no assurance that the juvenile justice system can produce the desired results as juvenile delinquency has been identified with society's failure to provide appropriate socialising instrumentalities for the new generation of children caught in the breakdown of traditional institutions like family and community, and the slackening of community ties under the impact of increasing mobility and urbanisation. The unquestioning adoption of western institutions without adequate research and evaluation in the Indian setting is not likely to lead to more impressive results in our society where, despite the growth of urban population, nearly 80 per cent of the population continue to be rural based. The delinquent child may be more often found in the city streets, but it has rural roots. The strategies that have to be thought of must, therefore, be simple and in tune with the prevailing life styles of the bulk of the population.

Going through the extensive literature that has grown round the delinquent child during the past two decades, one cannot help accepting that the conventional correctional approach, popularised in the west, and taken up by our social workers in unbounded enthusiasm, is at best a superficial programme which does not touch the core of the problem. There is a distorted placement of priorities, an undue emphasis on ideal conditions and a tendency to create an elaborate administrative machinery which has little hope of survival in the coils of red tape and bureaucratic regimen. That the luxury of these experiments is beyond the resources of our society is well known, but we persist in them. We ascribe the failure of the system to fitful implementation, lack of manpower and inadequate finances, forgetting that these are

constraints which will be ever present.

In support of the above statement, the juvenile justice system may be examined in some depth. When a juvenile offender is apprehended and cannot be released on bail, he has to be taken to a place of safety before production in the juvenile court. The place of safety can be an observation home or any other suitable place or institution (not being a police station). The arrest (apprehension) has to be intimated to the parents or guardians as well as the probation officer who is required 'to proceed forthwith to trace the antecedents and family history of the child'. Similar action is contemplated in respect of neglected children with the only difference that they have to be produced before the child welfare board which is expected to carry out the necessary enquiries before deciding their future custody and care. The board constituted under the Children Act 'shall consist of a chairman and such other members as the Government may think fit to appoint of whom not less than one should be a woman... and no person shall be appointed unless he has, in the opinion of the Government, special knowledge of child psychology and child welfare.' A juvenile court has to be presided over by a single magistrate or preferably a bench of magistrates of whom one shall be a woman. The Act also provides that every juvenile court shall be assisted by a panel of two honorary social workers 'possessing such qualifications as may be prescribed' of whom one shall be a woman and such panel shall be appointed by the Government.

The elaborate network of child welfare boards and juvenile courts running on parallel lines—one for neglected children and the other aimed at the reclamation of delinquent children—is bound to slide into an impersonal response system in an area where the essential requisites are personal involvement, dedication and genuine love of the child. It is an area where voluntary effort must dominate and the administrative infrastructure must be kept in the background. The children's laws and the administrative machinery suggested for their implementation, on the other hand, project an opposite arrangement.

## CREATION OF INSTITUTIONAL FACILITIES

With nearly a hundred million children living below the poverty line, the elite discussions as to who is a neglected child loses all meaning, because exploitation, exposure and abandonment are the direct consequences of degrading poverty. The most basic requirement in the contemporary socio-economic setting in India is, therefore, creation of adequate institutional facilities to take care of the children, by whatever nomenclature one may prefer to call them. At the same time, the problem has to be tackled with a sense of realism. It is typical of the Indian approach that instead of taking immediate steps towards creating this facility, the emphasis has already shifted to building up an auxiliary administrative network to supervise and control the functioning of that facility. It is a clear case of putting the cart before the

horse. It is a sad reflection on our concern for destitute and delinquent children that in 1977, the Children Acts covered only 197 of the 370 districts in the country. The number of juvenile courts is about 80, while observation homes are in the region of 150. The number of children's homes is 90 while the certified schools and analogous institutions for delinquent children are 85. The total capacity of *all* these institutions is about 15,000 while every year 150,000 children are apprehended by the police either under the Children Acts or for more formal violation of law.

#### THE MAUDLIN PHILOSOPHY

The official statistics represent only a very small fraction of the child population needing protection and care. Hordes of children swarm our railway stations, bus stands, temple precincts, cinema houses, hotels and shopping centres in our growing cities reflecting the naked poverty and neglect of centuries. Why cannot the police or any other agency-voluntary or governmental-take charge of them? The harsh truth is there is no place where they can be taken to. Institutions are few, and where they are in existence, they are over-crowded and run with meagre resources. In the implementation of the Children Acts, the Maudlin philosophy underlying them projects the police, the one agency with which the delinquent child comes into contact at the initial stages, in such unfavourable light that they have to efface themselves in an obsequious and apolegetic manner. It may be one of the reasons why the police do not take greater interest in enforcing the Children Acts more vigorously unless a serious offence is brought to their notice. From one point of view, it may even be good as it denotes one way of exercising discretion and nothing can be more injurious than taking cognisance of all delinquent acts of children. Quite often, it is desirable that minor delinquencies of children are ignored so that they do not have to pass through the experience of juvenile court procedures which, despite all the good intentions, are longdrawn and suffocating.

I have often felt, even among the highest police circles, a sense of reluctance to accept the responsibility for enforcement of what is euphemistically called 'social legislation'. True, the police have a point in their favour, burdened as they are with interminable problems of law and order and preoccupation with 'traditional' crime, but what is overlooked is that law is not immutable and it is subject to change in consonance with changes in the social structure. The point is obvious and needs no elaboration since it is for society to decide what laws are to be made and what should be deemed legal infractions at a particular point of time in its evolution. As society undergoes changes in structure, attitudes, values and norms, traditional crimes may disappear or the need for treating them as such may vanish; and offences of greater social import and injury may emerge in varying degrees of seriousness. However, a major point which has to be kept in view is that new and unfamiliar legislation may

founder on the shoals of hackneyed and unimaginative law enforcement and call for innovative techniques. Much of the welfare legislation relating to children reflects the prevailing hostility to conventional law enforcement symbolised by the police system whose forbidding image has been put forward in justification of minimising their role in implementation. The policy can result in irreparable damage in the long run. The error of this approach lies in our inability to utilise the available resources in the police system through appropriate restructuring to meet the demands of legislation in a welfare state.

It is not my case that implementation of laws relating to children should be left entirely to the police. Police cannot certainly provide institutional facilities nor can they be expected to play the role of big brother in all crisis situations. But it is good to bear in mind that the first official agency with which the child—neglected or delinquent—comes into contact is the police, and for this reason alone, the police must be attuned to handle the child with requisite sympathy and understanding. The artificial circumventions in the laws relating to children have emerged from excessive correctional sensitivity. They are based on an assumption that the impact of the first contact with law might be traumatic to the impressionable child. Hence the insistence on effacing the police to the maximum extent, but in a society where there is a deplorable lack of agencies to take charge of children, the well-intended provisions remain merely on paper. Lack of pragmatism is an important factor contributing to desultory implementation of legislation relating to children.

#### DESTITUTION THE BASIC PROBLEM

I hope that the International Year of the Child will focus the nation's attention on destitute and neglected children since, in my view, delinquency is no more than a part of this neglect. In the sophistication of the laws we have already formulated, we are perhaps embarking on too elaborate a system which may be self-defeating. We reject the available resources, tie up enforcement in knots with meaningless shibboleths, inhibit voluntary efforts and kill popular initiative in the vain hope that ideal conditions in which juvenile legislation can be implemented will prevail. That there have been instances of maladministration and mismanagement of some institutions is no justification for encircling the entire juvenile justice system with red tape and bureaucratic regimentation.

Statistically, juvenile delinquency is still not a menacing problem in our country, although the rising trend of the phenomenon is a pointer to the shape of things to come. The basic problem is destitution. With reference to our resources, we need simple laws relating to the care of children; a greater degree of police involvement in relation to apprehension and initial custodial care and whose contribution can be significant provided they are sufficiently

imbued with the philosophy of juvenile legislation; an informal adjudicatory system of the existing magistracy with proper orientation; provision for the exercise of discretion in dealing with juvenile offenders; and finally, the establishment of an adequate number of children's homes—one at least in each district to which destitute and delinquent children can be sent for custody and care. The insistence on a parallel set-up for the neglected and delinquent children at a time when we are not able to cover even half of the country under juvenile legislation bespeaks of lack of practicality. Overriding all these, there is a crying need for uniformity in the definition of the child and fixation of age limits and a reasonable degree of uniformity in the procedures for adjudication and institutionalisation. Let us do away with the clap-trap of 'young persons' and 'youthful offenders'. If we can provide the appropriate custodial care to children in the tender age below16, the main battle against delinquency is won.

Institutionalisation is, by no means, a satisfactory alternative to homes where children belong in their natural environment. But when children are neglected or exploited or when they display extreme manifestations of neglect through deviance, institutionalisation is the only means whereby attempts can be made to reclaim them. Despite the monotony, regimentation and overcrowding, they are better than nothing. In the search for an utopian structure of juvenile institutions and their supervision as contemplated in our children's laws, the progress has been irritatingly slow during the last thirty years. My fear is that in trying to achieve all things at one time, we may do very little indeed, the extensive plans remaining merely on paper as a gesture of our good intentions. Let us, therefore, make a modest beginning with attainable targets.

My suggestions may not satisfy the over-zealous social worker, but they can go a long way in creating a juvenile welfare and justice system which is not only in tune with our life style, philosophy and resources, but also can endure by the very evolutionary processes involved therein.

# Overview of Children's Acts

## J. J. Panakal

THE EARLIEST enactment providing for non-institutional processing of children convicted by the courts was the Apprentices Act. Later, in the second half of the nineteenth century, reformatories were established under the Reformatory Schools Act for processing convicted children. Along with the Probation of Offenders Act (1958), the Reformatory Schools Act could have materially contributed to juvenile correctional work in recent years, but this favourable opportunity was altogether lost by over-emphasising the need for special legislation and by waiting indecisively for the enactment of Children's Acts prior to expanding correctional services for children. In the process, programmes for non-delinquent children too suffered as the Children's Act provided the statutory basis for institutional and non-institutional services for such children.

Children's Acts differ from one another both in their scope and content. They have neither adopted uniform definitions nor uniform procedures in processing children.

For example, 'child' is defined under the Madras Act as a person under the age of fourteen years and 'young person' as above fourteen but under eighteen. Punjab, Hyderabad and Uttar Pradesh define child as a person under sixteen years. For Centre, Bombay, Karnataka, Rajasthan and Assam, the age limit for childhood is sixteen years for boys and eighteen for girls. In Saurashtra and West Bengal, it is eighteen years for both.

Again 'youthful offender' in Madras, Bombay, Punjab and Uttar Pradesh, 'juvenile offender' in Hyderabad, 'juvenile delinquent' in Saurashtra and West Bengal, or 'delinquent' in Centre, Madhya Pradesh, Assam and Rajasthan is defined as a person who has committed an offence punishable with imprisonment.

Children's Acts are not comprehensive child welfare Acts and were never designed to provide intensive child welfare services. In fact, the Acts had their accidental origin in persistent efforts to gradually separate children from adults at the undertrial, court and institutional levels. Children's Acts passed by State legislatures and later by Parliament provided for the juvenile court and institutional and non-institutional services such as probation and aftercare for children, both delinquent and non-delinquent.

#### THE AGE OF RESPONSIBILITY

Because of the emphasis on youthful offenders, child welfare has not coherently developed under the Children's Acts. This may be possible if exhaustive programmes under Children's Acts are separated from correctional work and the Acts are also suitably amended to provide for more child welfare services. It has also been suggested that there should be two separate pieces of legislation, one dealing with delinquent children and another the non-delinquent.

Children's Acts have not paid special attention to creative ways of helping families before children reach the court. Further, they have not been significantly helpful in indicating ways to reduce the intake of children at the level of the remand home. Minimum standards cannot be automatically maintained and individualisation cannot be consistently achieved when the volume of work is unusually large.

Children's Acts should have authorised special services to trace parents or other relatives of children as a preliminary step prior to detailed processing by courts. A child remembers details of the specific environment from which he came at the time he is taken charge of by official agencies. Therefore, at that stage, he is in a better position to help officers who are engaged in tracing his relatives. Where necessary, special staff could be provided who will travel with the children to the places from where they came and attempt establishing direct contact with their relatives. Special personnel entrusted with such work can certainly reduce the number of children committed to institutions.

The Indian Penal Code fixed the age of responsibility at seven but the Children's Acts have been liberally extending the age groups covered by the term 'child'. Today, it remains at sixteen years in some States and at eighteen in others. Without adequate institutional and non-institutional services, deliberately raising the age groups covered only yields a perpetual burden. There is need for special services for the young adult between 16/18 and 21/23 years and this should be met not by grouping most of them with children but by enacting special legislation for providing them with such services. Efforts are being made to draft such a Bill but it will cover only young adults who have offended against the law, some of whom are at present placed in borstal schools.

Efforts have been made to develop special police services to deal with delinquent and non-delinquent children coming under the provisions of Children's Acts. But the Acts too should provide suitably for special police with requisite training to work with children so that their alert service would not be restricted to a few centres but would always be available throughout the State. Today such services are provided mainly in large cities. Training of the police to enable them to make a constructive impact on children has not received the attention it deserves.

#### JUDICIAL PARTICIPATION

The enactment of the Central Children's Act in 1960 generated interest in the compulsory separation of delinquent children from the non-delinquent. The former are processed through the children's court and then placed in special schools. The latter are sent to the child welfare board and then admitted to children's homes. Surprisingly, even the Central Act does not provide for gradually separating the delinquent children from the non-delinquent (neglected) prior to their appearance before the board or court as both groups are necessarily confined in one and the same observation home. At the stage of taking charge of a child, it is difficult to distinguish between the delinquent and the non-delinquent, and it is often possible for the law violator to be taken charge of as a neglected child and vice versa. A recent amendment to the Central Children's Act has made provision for the interchangeability of cases between the court and the board.

Apart from the confusing problem of separating the delinquent from the non-delinquent, the question of taking decisions gravely affecting the lives of children without the active participation of the judiciary needs mature consideration. Even if this genuine issue is imprudently ignored, outside cities, there is a deplorable dearth of qualified personnel who can creditably fill positions at the district and taluka levels.

Regarding the right of the accused to defend himself by a legal practitioner of his choice, there is an interesting decision by the Gujarat High Court, arising from the order passed by the President, Children's Court, Rajkot, in Kario Mansingh Malu and others vs. the State of Gujarat:

Though a juvenile delinquent cannot be awarded death penalty, sentence of transportation or imprisonment, he can be fined in the specified circumstances. Merely because the juvenile court has no power to award a sentence of imprisonment, it cannot be said that the provisions of Article 22(1) of the Constitution of India cannot be pressed into service.

The court held that Section 22 of the Saurashtra Children's Act, 1954 being inconsistent with Article 22(1) of the Constitution of India, is void to that extent as it takes away the right of an arrested person to be defended by a legal practitioner of his choice. According to the Court, the question, therefore, whether these provisions of Section 22 of the Act are meant to protect the interest of a child is immaterial and irrelevant. Grounds of public interest will not be necessary to be considered. The Court said:

In this case, at the earliest stage, the three accused persons had prayed to the Court to allow them to obtain legal assistance and they had been denied

<sup>&</sup>lt;sup>1</sup>Gujarat Law Reporter, Vol, X, 1969, p. 66.

their right, thus causing prejudice to them. The Constitution gives an unfettered absolute right to a person who is arrested to defend himself by obtaining legal assistance. That right is not circumscribed in any manner, just as it has been done in the case of Article 19. No special provision is made in Article 22 in respect of women and children as it has been done in Article 15 of the Constitution of India. It cannot, therefore, be gainsaid that the fathers of the Constitution gave this right to a person who is arrested absolutely and it cannot be fettered. The State, therefore, cannot legislate so as to take away or abridge that right.

It is evident that the provisions of Section 22 of the Saurashtra Children' Act, 1954 (Act No. XXI of 1954) are violative of Article 22(1) of the Constitution of India and are void to the extent that they deny a person who is arrested, a right to be defended by a legal practitioner of his choice, in any trial of the crime for which he is arrested.

A recent amendment to the Central Children's Act has done away with the restriction on the appearance of legal practitioners in the children's court while providing that special permission of the competent authority would be necessary in the cases before the Child Welfare Board.

In some jurisdictions, uncontrollable children, who are not classified as delinquents, are kept in institutions for neglected children. This creates additional problems in institutional administration. Those familiar with institutional care and treatment of children often come across uncontrollable children who are more difficult to handle than most delinquent children.

#### TRAINED PERSONNEL

The fundamental question of having adequately trained personnel has always been answered in the affirmative. Though the Acts are unmistakably clear about the constitution of juvenile courts, the special qualifications of those taking decisions regarding children even under the Central Act are unreliably vague. At the present stage of development, it is entirely necessary to emphasise the necessity for specially equipped judicial personnel even where the juvenile court functions on a part-time basis.

The West Bengal Children's Act provides for a State level advisory committee. Similar provisions are needed in all legislations pertaining to children. The committee could set up sub-committees dealing with buildings, education, vocational training, probation, after care and other treatment programmes. Such committees will enable informed persons interested in this field of work to contribute to the development of services for children under the various Children's Acts.

Though Children's Acts make provision for contribution by parents or guardians, these have been disappointingly ineffective. Such arrangements should be examined and amended to enable the close association of parents

and guardians with institutional services for children.

Children's Acts do not lay down a strictly uniform procedure for rapid inter-State transfer of children. The procedure could be simplified to enable officers of the directorate in charge of child welfare to send children swiftly from one State to another. Already, we have the Transfer of Prisoners Act implemented all over the country which provides for the transfer of prisoners from one jurisdiction to another. Discouraging problems encountered in the transfer of institutional inmates from one jurisdiction to another may be solved through an all-India legislation exhaustively covering inter-State transfer of inmates not only of institutions for children but also of institutions exclusively serving other types of inmates. Transfer should be considered at the request of parents, guardians or the children themselves.

Children's Acts provide for remand homes and certified schools. In some States, there are remand homes in almost all districts, but there are few certified schools. Because of uncomfortable overcrowding in certified schools, committed children are required to stay protractedly in remand homes awaiting admission to such long-term institutions. At the same time remand homes which are short-term institutions do not have comprehensive programmes for committed children. Legislation should wisely promote remand-cumcertified institutions in all districts and, if necessary, at the taluka level as well.

In some States, the remand home has only one officer who is designated as probation officer-cum-superintendent. Tedious investigation duties of the probation officer inevitably make it necessary for him to remain constantly outside the remand home with the disastrous result of having to leave children under the doubtful supervision of the lower staff who have no requisite training. Combining the remand home with the certified school would make it possible for the joint institution to have more senior personnel on the staff without the initial investment of additional funds.

A combined multipurpose institution at the district level serving as remand home and certified school will provide improved facilities to process children virtually close to their homes, instead of attempting their rehabilitation at far away centres. Uninterrupted contacts with families of children will thus be markedly improved. Communities too will thus be enabled to associate themselves with assisting the children, a majority of whom may belong to the district.

Institutions under Children's Acts are not diversified to the extent they should be. The pseudo-diversification curiously noticed is nothing more than disjointed fragmentation of services. When the proposed remand home-cumcertified school is brought into disciplined existence at the district level, it should be possible to develop after care services which are of direct help to the released inmates. The immediate presence of one more officer for after care would immensely help the rehabilitation of children.

Apart from integrating remand homes and certified schools at the district

and taluka levels, wherever possible, all other institutional and even non-institutional services for children should be centrally located in proximity on a common campus. Wherever the campus plan is in operation for a group of institutions for children, its augmented strength is derived not only from their physical closeness but from the full-time presence of varied professional personnel. The Acts and rules should broadly outline this stimulating pattern of development.

In difficult cases, where release on licence is not readily granted, the inadequate criterion of release is age or period of stay. Further, after care is all the more important especially for children who are not granted licence. The Acts should be amended so that children ill-equipped to face the world are not released without benefiting from the guidance of after care services.

#### MENTALLY RETARDED CHILDREN

In the conspicuous paucity of special institutions, mentally deficient children often receive care and training in institutions provided under the Children's Acts. However, even after they complete 18 years, these institutions are reluctantly obliged to keep them on as they have no other place to go to. Some institutions for mentally deficient children have inmates who are over 45 years old. This is not a pertinent issue for Children's Acts alone but should be examined in relation to amendment to the Lunacy Act.

The essential role of municipalities and district level authorities in intensive work under Children's Acts has not been clearly laid down as has been done in legislation pertaining to prevention of begging. Children's Acts should make it possible for involving them in the efficient administration of services for children.

Children's Acts provide for officers who will administer the services. They may or may not have professional training for work with children in general or with delinquent children. The Children's Acts should have specialists, at least at the assistant director level, who have special qualifications in the design and construction of buildings, education, vocational training, employment, probation, after care, other forms of treatment, etc.

Provisions of the Children's Acts, particularly those relating to action against adults who make children beg, are not in strict conformity with the relevant sections of the Indian Penal Code and legislation pertaining to prevention of begging. Amendments are manifestly necessary to exercise control over persons obstinately engaged in promoting begging by children.

In the field of institutional administration, the Acts should specify guidelines regarding discipline and punishment. These could be fully elaborated under the rules. Vital areas are blindly ignored in the enthusiasm to make documents read exceptionally progressive, but when actual implementation is left to persons with limited training, practice tends to be unscientific.

Detailed rules should be drawn up and these should be revised as and when

need arises. In making rules under the Children's Acts, the harassing problems of the lower socio-economic groups must be considered. Rules are often made without regard to the difficulties experienced by helpless families who are compelled to use these services. For ready reference, the Act and rules incorporating the latest amendments may be distributed free to all workers in the field.

For the proper implementation of services under the Children's Acts, it is necessary to prepare a detailed manual. At present, prescribed rules provide only limited guidance. The rules are not integrated and are framed to partially cover one or more services under Children's Acts. The manual should be comprehensive enough to serve not only as a manual of operations but also as a training manual.

Even among those who are supposed to be engaged in work under the Children's Acts, there is woeful ignorance regarding legislation, rules and procedures. Some do not even possess copies of the Acts and rules. It should be laid down that all those who are associated in paid or voluntary capacity with services for children should give evidence of their growing familiarity with the Acts and rules.

#### LICENSING OF CHILDREN'S INSTITUTIONS

The Women's and Children's Institutions (Licensing) Act of 1956 passed by Parliament and which extends to the whole of India is of special relevance as it provides for the licensing of institutions for children and for matters incidental thereto. Bringing the legislation into force has been left to the State Governments. The Act applies only to privately managed institutions. Similar Government institutions are excluded from its purview. The Licensing Act defines child as a boy or girl who has not completed the age of 18 and a woman as a female who has completed the age of 18.

The Act is not applicable to hostels, or boarding houses attached to or controlled or recognised by educational institutions, or any protective home established under the Immoral Traffic in Women and Girls Act, 1956.

After the commencement of the Licensing Act, no person shall establish or maintain an institution except under and in accordance with the conditions of a licence granted under the Act. Breach of any of the conditions of the licence may lead to the revocation of licence and the institution shall cease to function. Rules under the Act provide the form of application for licence and the particulars to be contained therein; the form of licence and the conditions subject to which such licence may be granted; the management of institutions; the reception, care, protection and welfare of women and children in institutions, including all matters relating to their diet, clothing, accommodation, training and general conduct; inspection of the institutions; maintenance of registers and accounts and submission of returns and audit of such accounts; the discharge from institutions of women and children and

their transfer from one institution to another; the manner of filing appeals under the Act and the time within which such appeals shall be filed; the manner of service of orders and notices under the Act; and any other matter which is to be or may be prescribed.

The Licensing Act is implemented in Maharashtra but, to avoid duplication of work, its scope was restricted by an amendment to the Bombay Children's Act (BCA) so as to exclude the application of the Licensing Act to institutions under the Bombay Children's Act. Section 6(3) of BCA now reads;

The Women's and Children's Institutions (Licensing) Act, 1956, shall not apply to any industrial school established, any industrial school or educational institution certified, any place declared as a remand home, any institution or association recognised as approved place or fit person institution, or any voluntary home recognised, under this Act.

Parliament later passed the Orphanages and Other Charitable Home (Supervision and Control) Act, 1960 to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions, and for matters connected therewith. This Act too extends to the whole of India and its implementation is left to State Governments.

The following definitions are found in the Act: 'child' means a boy or girl who has not completed the age of eighteen years; 'women' means a female who has completed the age of eighteen years; and 'certificate' means the certificate of recognition granted under the Act.

Nothing in the Act shall apply to any hostel or boarding house attached to, or controlled or recognised by, an educational institution; or any protective home established under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or any reformatory, certified or other school, or any home or work-house, governed by any enactment for the time being in force.

The board of control under the Act shall consist of three members of the State legislature, five members of the managing committees in the State, the officer-in-charge of social welfare in the State, and six members to be nominated by the State Government, of whom not more than one shall be a member of Parliament from the State and not less than three shall be women. The chairman of the board shall be elected by the members of the board from among themselves.

It shall be the duty of the board to supervise and control generally all matters relating to the management of the homes in accordance with the provisions of the Act, and exercise such other powers and perform such other functions as may be prescribed by or under the Act. The board has the power to give directions to the manager of a recognised home and to inspect any home.

The funds of the board shall consist of contributions, subscriptions,

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donations or bequests made to it by any person, and grants made to it by the State Government or any local or other public body.

After the commencement of the Act, no person shall maintain or conduct any home except under, and in accordance with, the conditions of a certificate of recognition granted under the Act. The board may revoke the certificate if it is satisfied that the home is not being conducted in accordance with the conditions laid down in the certificate, or the management of the home is being persistently carried on in an unsatis factory manner, or is being carried on in a manner highly prejudicial to the moral and physical wellbeing of the inmates, or the home has in the opinion of the board otherwise rendered itself unsuitable for that purpose.

If, after consultation with the board, the State Government is satisfied that the circumstances in relation to any class of homes or any home are such that it is necessary or expedient so to do, it may exempt such class of homes or home, as the case may be, from the operation of all or any of the provisions of the Act or of any rule or regulation made thereunder.

The State Government may make rules to carry out the purpose of this Act. The board too may, with the previous approval of the State Government, make regulations not inconsistent with the Act and the rules made thereunder for enabling it to perform its functions.

As from the date of the coming into force of the Act, in any State the Women's and Children's Institutions (Licensing) Act, 1956, or any other Act corresponding to the Act in force in that State, immediately before such commencement, shall stand repealed.

#### THE ORPHANAGES ACT

The Orphanages Act is on the statute book for the past nineteen years but it has been implemented only in Kerala. The Act has provided for exempting institutions such as those under the Children's Acts. It also enables greater public participation in the planning and organisation of institutional services.

Intricate problems in the field of child welfare arise not only from want of legislation but also from want of administrative action. Children too need be firmly convinced and positively converted to the idea that they are being subjected to an operation which is downright honest. They are not inclined to develop faith in a programme when they realise that there is an appalling gap between precept and practice.

# The Problem of Neglected Children and Youthful Offenders

K.F. Rustamji

In the silent gloam of the temple Children come out to play. God watches from above, And forgets the priest.

-TAGORE

ONE RESULT of the non-registration of crime by the police to avoid criticism of its increase in the legislature, is that we never become aware of any problem till we find that it has gone out of control and overwhelmed us. An excellent example of that is juvenile delinquency.

Not only are the figures of juvenile delinquency supplied each year by the diligent Bureau of Police Research and Development useless, there is an additional complication that we have never attempted to define the term. We accepted the western definition, but found that it did not fit the Indian milieu. Yet, we accepted the term juvenile delinquency for crime committed by children. At the same time we talked the language of the western criminologists regarding causation and control. The muddle is a common one—eastern minds and western thought.

In the west, juvenile delinquency was mainly the result of affluence and changing social mores, which weakened family ties, and led children into misbehaviour; which sometimes resulted in serious crimes like gang warfare. Drugs, music of a raucous, repetitive type, and a whole lot of what you could call youth culture, flowered in the '50s, out of that drop-out 'hippie' generation, and they became the leaders in fashion, in art, and as activists in the anti-Vietnam war even in the political sphere. In later years, they grew up a disappointed and bored generation with a high suicide rate. The new generation of the young are not as prominent as the earlier lot. Perhaps, parents, children and school teachers, and all those connected with children, have adapted themselves to changed times.

### POVERTY AT THE BASE OF CRIMES

If we take the whole spectrum of juvenile delinquency in India—from copying in examination, through eve-teasing, hooliganism on the campus, to the field of coal pilferage, prohibition crime and smuggling, pick-pocketing and 'dadagiri', you will find one basic cause running through all these activities—it is poverty, not affluence. Even in campus unrest, there is a streak of it though not as prominent as it is in pilferage, prostitution and petty crime.

In one way or another juvenile delinquency covers the boys and girls who will be citizens of tomorrow. But it is a vast subject, embracing as it does education, employment, family planning, health, migration, development of urbanised areas, and so many other factors which affect the care and wellbeing of the young.

Suddenly the enormous size of the problem of children has come before us. We see children picking food out of dustbins in Calcutta—collecting paper scrap, like ants working assiduously, in the streets of Delhi. Prohibition and illicit distillation have opened up forbidden areas of employment in Madras and other places. Steadily, the number of uncared children in the streets of our cities is increasing as migration for employment occurs, and urbanisation runs amuck in our semi-urbanised areas. We have reached a stage when pilferage has ceased to be a registered crime. That seems to be the only way a large number of children can survive.

Can we make out a systematic plan to deal with the problem? In the first place, the method adopted in the Children's Acts of putting all types of children requiring institutional support in the same place must be changed. There should be separate institutions for neglected or abandoned children, separate ones for those that have committed crime. As regards uncontrollable children, they should not be placed with the neglected ones. They might go with the offenders, but perhaps the best course would be not to institutionalise them at all. Parents have a responsibility in this regard which the state cannot take over. Children that are suffering from mental ailments obviously require to be separated from the other groups.

We need to concentrate our attention on two types of institutions:

- 1. for neglected or abandoned children; and
- 2. for children convicted and sentenced to an approved institution.

The first type, for abandoned and neglected children, could be on the pattern of Mother Teresa's homes in Calcutta or the Seva Samajam schools of Madras. The state should support, not run them. They can be run much better by public spirited people, who do not fritter away resources on staff and buildings.

In my view it is a crime to commit to an adult jail a young offender, caught in the coils of the law for a minor offence. You find them in large numbers in

jails all over the country—boys who have been found 'loitering' at railway stations, travelling without ticket or smuggling rice or liquor. They linger on as undertrials for months, and the worst feature of such imprisonment is that it removes the fear of jail. There are some types besides to whom life in jail presents an opportunity to bully, to ravish younger persons; and as they are the ones who are depended upon to control the others, they get several facilities from the jail staff. For them life in jail seems to be easier than life outside.

The fact that the probation system has not been developed in several States is the cause of innumerable young persons being damaged by our jails. The law regarding first offenders and young offenders can hardly be applied if you have no probation, no certified schools, even no juvenile courts.

And then we talk about the International Year of the Child.

The Chingleput Approved School in Tamil Nadu is an approved school which can be developed as a model for the whole country, provided its industries are remodelled on modern lines. Young offenders in addition should be apprenticed under the law to public and private sector industries at the age of 16, after they have shown some aptitude for the industry in question.

#### JUVENILE COURTS

In the last few years, several of the juvenile courts have been going wrong on one count—they have begun to adopt the procedures of normal trials. I believe that it would be best not to have a legally trained person as a juvenile court judge. What we require is a mother — the type that would shout at the culprit, scold him, lash him with her tongue, make him cry, and then take him into an embrace—and love and guide him. The worst types of offenders will still commit crime. The best and the second best will be afraid of hurting the mother, of losing faith with her.

I am also of the view that best work with children is done by women—whether it is the nuns, or social workers of Bombay and Madras.

And the best persons for organising children's work are the women in the IAS. I have seen some of them in south Indian States—dedicated, efficient, knowing their job; and inspecting, criticising and developing institutions in the right way.

# Parental Influences in Juvenile Delinquency

K.D. Sikka

JUVENILE DELINQUENCY is rather an imprecise term to convey clear meaning. Quite frequently it is used as a handy label to pin on any youngster displaying some degree of violating societal norms; sometimes its use is limited to denote only that category of young persons, under a certain age, who have been referred to the courts for acts in violation of the criminal laws of the state. Other times, the term includes, in addition to the criminal offences, conduct such as being ungovernable, desertion from home, truancy from school, association with undesirable companions, etc. However, for the discussion in this paper, delinquency is any act, course of conduct, or situation which can be taken cognisance of by a juvenile court or similar competent authority, whether in fact it comes to be attended there or by some other source or indeed remains unattended.

What causes delinquency? There is no simple and straightforward answer available, though many physical, emotional, and environmental reasons have been identified, which in their interactions are considered at the helm. However, among the various environmental factors like the family, the school, the neighbourhood, the class structure, etc., the contributions of the family appear quite substantial in the etiologic influences woven into the tapestry of delinquency. It must however be emphasised at the outset that all these, with their various dimensions, are rather intertwined, concurrently acting and reacting upon each other. We cannot consider any one of them in any compartmental fashion though the following discussion of the role of the family may give that sort of impression. Actually, the problems, created or not handled by either of them, can have repercussions on the others.

#### ROLE OF THE FAMILY

Family is the first crucial group in the life of the child and a springboard for his social and personal growth. In the apt words of Sutherland and Cressey, "no child is so constituted at birth that it must inevitably become a delinquent or that it must inevitably be law-abiding, and the family is the first agency to affect the direction which a particular child will take". Many

<sup>1</sup>Sutherland, E.H. and Cressey, D.R., *Principles of Criminology*, The Times of India Press, Bombay, 1965, p. 171.

interacting aspects of family life, however, are involved in the formation of the cumulative atmosphere which may affect the behaviour of the child one way or the other. Below, some of the important ones are identified and their impacts analysed.

#### Broken Home

Mother and father are generally considered the two wheels of a family cart which cannot move smoothly when either of them is removed or when relations between them are damaged. The structural break may be because of death, divorce/separation, or desertion. Concern with the broken homes as one of the explanations for delinquency has persisted over the years on the belief that a broken family tends to rearchildren with sick personalities and sick personalities have unusual difficulty in conforming to social rules. A number of investigations have pointed towards the high incidence of structural breaks in the family background of delinquent youths. The United States Children's Bureau\* found broken homes in 36 per cent of boys' cases and 50 per cent in girls' cases disposed of in sixty-four juvenile courts in 1936. Among children committed to institutions there has been noted even higher proportion from broken homes. In 1923 the United States' Bureau of the Census† reported that 56 per cent were from broken homes. Lumpkin‡ found that in Wisconsin's correctional schools for girls 63.5 per cent were from broken homes. The Gluecks in their study (500 Criminal Careers, published in 1930) of 500 youths committed to the Massachusetts Reformatory discovered "in sixty per cent an abnormal, frequently unwholesome home situation during the youths' childhood by reasons of the long or complete absence of one or both parents."2

In the Indian setting, the two follow-up studies conducted in Maharashtra by the Indian Council of Social Welfare, revealed that out of 229 delinquents<sup>3</sup> and 305 'non-delinquents' traced and interviewed, 55 per cent and 61 per cent respectively belonged to broken homes prior to their institutionalisation. While it is very probable that the factor of the family break may have strongly influenced judges in the direction of institutional commitment, the collateral evidence on this point is also available from researches based on juvenile

<sup>\*</sup> Children's Bureau, Juvenile Court Statistics, U.S. Department of Labour, Washington, 1939.

<sup>†</sup> Bureau of Census, Children Under Institutional Care, Washington, 1927.

Lumpkin, K.D.P., "Parental Conditions of Wisconsin Girl Delinquents," American Journal of Sociology, Vol. 37, No. 2, 1932.

<sup>&</sup>lt;sup>2</sup>Glueck, S. and Glueck, E., *Of Delinquency and Crime*, Charles C. Thomas, Springfield, Illinois, 1974, p. 63.

<sup>&</sup>lt;sup>3</sup>Indian Council of Social Welfare, *Impact of Institutions on Juvenile Delinquents*, United Asia Publications, 12, Rampart Row, Bombay, 1969, p. 22.

<sup>&</sup>lt;sup>4</sup>Indian Council of Social Welfare, *Impact of Institutions on Children*, United Asia Publications, 12, Rampart Row, Bombay, 1973, p. 45.

court records.\* Sheth reports that the incidence of broken homes was to the tune of 47.4 per cent among the offenders brought before the juvenile court, Bombay,<sup>5</sup> during the period 1941-1956; one-fifth of these offenders from broken homes had lost both the parents. Also, condensing and adapting from S.C. Varma's *The Social and Economic Background of Juvenile and Adolescent Delinquency in Lucknow and Kanpur* (Doctoral dessertation) Chandra<sup>6</sup> recounts that among the 300 cases of delinquents studied, 150 each from the two cities, during 1956-1959, only in 120 cases were both parents alive; in 60 cases both mother and father were dead.

On the other hand, Sutherland and Cressey comment that although various research reports indicate that delinquents coming from broken homes range from 30 to 60 per cent, the percentages rather tend to cluster around 40 per cent. But such statistics are meaningless except in comparison with similar percentages for the non-delinquent children or for the total population.<sup>7</sup> Looking at the results of the comparative studies, however, one legitimately cannot feel sure whether broken home is or is not closely linked with delinquency. For instance, "Slowson† found a ratio of 1.5 to 1 in comparing the institutions for delinquents in New York state with the public school in New York city which had children of the lowest social status." Shaw and Mckay compared boys against whom official delinquency petitions were filed in the juvenile court of Chicago in 1929 with other boys drawn from the public school population of the same city areas and concluded that broken homes were 36.1 per cent for the school group against 42.5 per cent for the delinquent boys, a ratio of 1 to 1.18,‡ indicating that the broken home as such does not

\*"In a study of 966 cases presenting special problems of diagnosis, referred by the Boston Juvenile Court to Dr. William Healy and his associates at the Judge Baker Foundation, Sheldon and Eleanor Glueck found that 48 per cent came from broken homes".

Shulman, H.M., "The Family and Juvenile Delinquency," The Annals of the American Academy of Political and Social Sciences, Jan. 1949, p. 24.

<sup>5</sup>Sheth, H., *Juvenile Delinquency in an Indian Setting*, Popular Book Depot, Bombay, 1961, p. 199.

<sup>6</sup>Chandra, S., Sociology of Deviation in India, Allied Publishers, Bombay, 1967, p. 48. <sup>7</sup>Sutherland and Cressey, op. cit., pp. 175-176.

†Slowson, J., The Delinquent Boy, Badger, Boston, 1926.

<sup>8</sup>*Ibid.*, p. 176.

<sup>9</sup>Monahan, T.P., "Family Status and the Delinquent Child: A Reappraisal and Some New Findings", in Giallombardo, R. (Ed.), *Juvenile Delinquency: A Book of Readings*, John Wiley & Sons, Inc., New York, 1966, pp. 211-212.

‡ Shaw, C.R. and Mckay, H.D., "Social Factors in Juvenile Delinquency" in *Report on the Causes of Crime*, National Commission on Law Observance and Enforcement, Washington, 1937.

These results were however obtained by Shaw and Mckay after the public school population data were adjusted for age and ethnic composition to make them comparable with the delinquent group. The original observed rate of broken homes, however, was only 29.0 per cent among the school boys. The 'corrective' standardisation method used has been questioned by Toby (Toby, J., "The Differential Impact of Family Disorganisation," in

(Continued on p. 648)

seem to be a significant causal factor. Hirchi's analysis of self report delinquency studies also reveals that there is no dearth of boys from broken homes in these samples and the relationship between the broken home and delinquency is rather very weak. Conversely, Burt is reported to have found about twice as many broken homes in a delinquent group in England as compared to public school children of the same age and social class. The Gluecks, while comparing the families of the matched five hundred delinquents and five hundred non-delinquents, in their study entitled *Unravelling Juvenile Delinquency* (published in 1950) discovered again an excessive incidence of broken homes among the delinquent group, *i.e.*, 60.4 per cent against 34.2 per cent among non-delinquents control group 2, a ratio of 1.8 to 1.

Even if it may not be possible to reach the confirmed conclusion that structural break in the family is directly responsible for delinquency, it cannot however be denied that more delinquents do come from broken homes. Further, the actual breaking up of the home, except in cases of death, is preceded by much disruption, disorganisation, and tension. And it is more so that these negative elements could be the real causative factors the eventual break-up being only the final step in the long line of disruptive activity. "That so many children surpass this handicap (however) is an exemplification of their own resilience and a demonstration of the presence of other forces acting towards the child's socialisation in the community, rather than a proof of the unimportance of the normal family life in the development of norms of conduct or the unimportance of the handicaps experienced by the child in the broken home." <sup>13</sup>

The interpersonal conditions of the family relationships are more important nonetheless than the physical break in the family. Child guidance clinic and juvenile court experiences demonstrate that not very many children become delinquent where the members of a family have successfully maintained love and affection for one another. Also, "a striking relation to the clinic's success in dealing with children were the marital adjustments of the parents, the emotional tone of the home, and the behaviour and attitudes of parents toward the child." A home formally intact but daily and nightly rent asunder by quarrelling parents is very likely to prove more injurious than a one-parent family with adequate relationships. And though a happy home

(Continued from p. 647)

Knudten, R.D. and Schafer, S. (ed.) Juvenile Delinquency: A Reader, Random House, New York, 1970, p. 183) and others and they feel that Shaw-Mckay data are also susceptible to reverse interpretation.

<sup>16</sup>Hirschi, T., Causes of Delinquency, University of California Press, Berkeley, 1969, pp. 242-243.

<sup>11</sup>Monahan, op. cit., p. 211.

<sup>12</sup>Glueck and Glueck, op. cit., p. 64.

13 Monahan, op. cit., p. 213.

<sup>&</sup>lt;sup>14</sup>Shulman, H.M., "The Family and Juvenile Delinquency", The Annals of the American Academy of Political and Social Sciences, January 1949, p. 28.

relationship is no sure guarantee to overcome all the negative characteristics of the school and the neighbourhood, in emotionally disharmonious families children too often get 'pushed' from home because of these disturbances, to seek outside contacts for resolving feelings of insecurity and frustration rather than be 'pulled' by outside attractions.

## Working Mothers

Another factor which has sometimes been advanced as one of the major causes of delinquency is the mother who is employed outside her home. This is on the assumption that a young child needs his mother's constant attention to assure his proper emotional as well as physical development and this cannot become available when she is away for a substantial part of the day and returns with nervous and physical exhaustion. Further, in the adolescent years when supervision becomes more important, maternal employment reduces its effectivity thereby unduly exposing children to delinquent influences. However, conflicting views are advocated, some writers contending that mothers who go to work and are not at home in time to greet their children returning from school are a major cause of juvenile crime while others feel that there has been no increase in juvenile delinquency due to mothers taking up employment.<sup>15</sup>

Though traditionally the employed mother was considered as a deviant from social customs and good family policy as the unemployed father, these days the percentage of mothers who are employed is increasing markedly. Not that the mothers did not take up full-time employment in the past but they did so particularly because family needed additional income. In the past, she often was the mother without a husband or the wife of an unemployable or intermittently employed man. Economic need is still a motivation but not necessarily always out of dire necessity; it is quite often a symbol of aspiration and upward social mobility. In this regard a working mother's economic contribution can be considered rather an integrative and stabilising influence in the family since it may connote a desire for providing greater family security, continued education of children, a summer vacation or any one of a number of things thought to be of benefit to all members of the family.<sup>16</sup>

Research evidence available to date also shows that there is very slight relationship, if at all, between delinquency and the mother being at work. Mentioning here only two of the studies, Yadkin and Holme quote Ferguson and Cunnison<sup>17</sup> "that the fact that the mother was out at work

<sup>15</sup>Yadkin, S. and Holme, A., "Working Mothers and Delinquent Children", in Mays, J.B. (Ed.), *Juvenile Delinquency, the Family and the Social Group: A Reader*, Longman Group Limited, London, 1972, p. 183.

<sup>16</sup>Cavan, R.S. and Ferdinand, T.N., Juvenile Delinquency, J.B. Lippincott Company,

Philadelphia, 1975, pp. 10, 211-212.

<sup>17</sup>Ferguson T. and Cunnison, J., The Young Wage Earner, Oxford University Press, Oxford, 1951.

did not appear to be of any great importance in relation to delinquency: the overall proportion of boys convicted between their eighth and seventeenth birthdays was lower among the sons of mothers who were out at work, a slight excess among these boys during school years being more than compensated by a lower figure after leaving school."18 Re-analysing the results of Gluecks' Unraveling Juvenile Delinquency which had found evidence of a deleterious influence on the family and on children of certain mothers working outside the home, Maccoby\* is reported to have applied, instead of the Gluecks' two-way correlation, a three-way comparison—i.e., employment status of the mother, the quality of supervision of the child, and the percentage of delinquents. On this basis, 19 per cent of the boys whose mothers were regularly employed and whose supervision was rated good were delinquent. On the other hand, 32 per cent of those whose mothers were housewives were in the delinquent group. His interpretation, and which reinforces the commonsense view, has been that if the mother remains at home but does not keep track of her child, he is far more likely to become a delinquent than if he is closely watched. Furthermore, if a mother who works arranges adequate care for the child in her absence, he is no more likely to be delinquent than the adequately supervised child of a mother who does not work. 19 Hence, we can reasonably state that it is the adequate supervision and attention, whether by the mother herself or by an acceptable substitute, rather than the fact of her employment which is relevant as one of the crucial insulating resources against delinquency.

## Socialisation

Socialisation is the process through which the child becomes aware of the basic values of his society and acquires the attitudes characteristic of it. And there is general consensus that early family training influences strongly the inculcation of these values and attitudes which on their part have influential impact on the future behaviour of the child. The family is the first 'school' for socialisation and the social-psychological literature emphasises vehemently that "early childhood experiences, especially those within the family, determine in great part how the youngster will be moulded and how he will eventually adopt to the external environment". <sup>20</sup> Depending upon the emotional stability of the relationships of parents and the patterns of disciplining and guiding, the child will learn to handle the pressures and responsibilities

<sup>18</sup> Yadkin and Holme, op. cit., p. 184.

<sup>\*</sup>Maccoby, E.E., "Effects Upon Children of their Mothers' Outside Employment", in Bell, N.W. and Vogel, E.F. (Eds.), A Modern Introduction to the Family, The Free Press, New York, 1960.

<sup>&</sup>lt;sup>19</sup>Robinson, S.M., Juvenile Delinquency: Its Nature and Control, Holt Rinehart and Winston, New York, 1960, p. 114.

<sup>&</sup>lt;sup>20</sup>Trojanowicz, R.C., *Juvenile Delinquency: Concepts and Control*, Prentice Hall, Inc., Englewood Cliffs, New Jersey, 1973, p. 65.

of growing up, inside and outside the home. Social education within the family is firmly rooted in the emotional ties which link the various members together and it is primarily from the warm and supporting parents that the child learns the reciprocity of love and affection. When the parents are rejecting, indifferent, or inconsistent in the sense of sometimes overindulgent and at other times unduly strict, the child feels very insecure. When he never knows how his parents are going to react to what he does and finds that they are at times angry, sometimes interested, and at other times uninterested, he is at a peculiar risk. His problems are further aggravated when each parent reacts with completely contradictory valuations, or when one condones and the other punishes with undue harshness.

The factor of family discipline has been particularly stressed in his London study by Burt and the Gluecks, in their 500 *Criminal Careers*, referred to earlier. Burt believed that defective family disciplinary pattern existed in his delinquent sample nearly seven times as frequently as in the non-delinquents, and the Gluecks found poor discipline in 70 per cent of the homes of the delinquents they studied.<sup>21</sup>

Home discipline fails most frequently because of parental rejection, indifference and neglect, and these conditions arise especially from lack of love and affection for the child. Looking at the emotional tone of family interrelationships from three dimensions, *i.e.*, between the parents, between father and child, and mother and child the picture which emerges very strongly substantiates the importance of cohesiveness of the family as a significant bulwark against delinquency. Two of the few American studies quoted by Coleman and Broen are mentioned here in this context.

In a study of delinquent and non-delinquent boys Andry (1962) found that the great majority of delinquent boys felt rejected by their fathers but loved by their mothers, while the non-delinquents felt loved equally by both parents. Andry also noted that the delinquent boy typically tended to dislike his father. In the backfound of a group of 26 aggressively delinquent boys, Bandura and Walters (1959) delineated a pattern in which father rejection was combined with inconsistent handling of the boy by both parents. To complicate the pathogenic family picture, the father typically used physically punitive methods of discipline, thus augmenting the hostility by the boy already felt for him. The end result of such a pattern is a hostile, defiant, inadequately socialised boy who lacks normal inner controls and tends to act out his aggressive impulses.<sup>22</sup>

Further, to explain why so often one child of a family became delinquent

<sup>&</sup>lt;sup>21</sup>Tappan, P.W., *Juvenile Delinquency*, McGraw-Hill Book Company, Inc., New York, 1949, p. 137.

<sup>&</sup>lt;sup>22</sup>Coleman, J.C. and Broen, Jr. W.E., Abnormal Psychology and Modern Life, Taraporevala Sons and Co., Bombay, 1974, pp. 383-84.

while another did not, Healy and Bronner,23 the former a psychiatrist and the latter a psychologist, studied family interrelationships (rather than the individuals as their focus) of the families brought before the juvenile courts in three cities of the U.S.A., Boston, Detroit, and New Haven. To be eligible for the study, the families of the delinquents had also to have a non-delinquent child. not more than two years older or younger and of the same sex as the delinquent. It was a sort of 'action research' in the sense that these families were offered counselling services to bring them into normal contact with the research staff; it was believed that one could not really know, much less understand, the dynamics of family interrelationships in a single interview. Among the 105 families studied, there were dissimilarities of income, church attendance, and discipline at home, from lax to strict. And yet in each of these families there was a non-delinquent as well as a delinquent child. Among the children there were no marked differences with respect to intelligence, educational achievement or physical prowess. The counselling clinic's contacts revealed, however, that in 91 per cent of cases the delinquent child felt thwarted and rejected even though in many instances the parents were unaware either of their own role in the delinquent's concept of himself or of his feelings towards his family.

Among the Indian studies, Khanna<sup>24</sup> analysed family interrelationships of 85 serious truants from basic primary schools of Lucknow whom he considered as pre-delinquents, and found that in 61.18 per cent of their families the relations between the parents were disharmonious, leading to frequent quarrels and often beating of the mother by the father. Though Varma's<sup>25</sup> observations that out of 148 families (unbroken homes + homes with one step-parent) of 300 delinquents in Lucknow and Kanpur in 88 (59.5 per cent) of them relations between the parents were cordial, the attitudes of delinquents towards their fathers and/or mothers (including one-parent families) were:

	Hostile	Indifferent	Liking
		(per cent)	
Father	46	33	21
Mother	13	20	67

Again, in the study of 300 young runaways in the custody of the juvenile court, Bombay, Kapadia and Pillai<sup>26</sup> discovered that among the 217 children

<sup>&</sup>lt;sup>23</sup>Healy, W., and Bronner, A.F., New Light on Delinquency and Its Treatment, Yale University Press, New Haven, 1936 (Reprinted in 1957)

<sup>&</sup>lt;sup>24</sup>Chandra, S. op. cit., p. 22.

<sup>&</sup>lt;sup>25</sup>Ibid., pp. 52-53.

<sup>&</sup>lt;sup>26</sup>Kapadia, K.M. and Pillai, S.D., Young Runaways, Popular Prakashan, Bombay, 1971, pp. 54, 62, 68-69.

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who had fathers, in 70.5 per cent of them unkind treatment by father appeared to be one of the most important reasons for their running away from home. The attitude of the mothers, however, was found to be generally warmer; out of 236 mothers, 58 per cent were considered affectionate. Further, excluding the non-parent (34) and one-parent (67) families, relationships between the two parents were characterised by discords among 57.4 per cent of these 195 families.

Although it cannot be said that all delinquency is because of parental disharmony, the great importance of family relationships vis-a-vis delinquency cannot be doubted. To some extent the love of one parent may help to offset the neglect or harshness of the other, the loving mother being of special significance in training her children towards conforming behaviour, but the appropriate roles of both the mother and the father are quite important in the socialising process.

## Parental Conduct Models

Of the two sides of the coin of identification, one is the loving relationship between the parents themselves as also that between the parents and the child and the other is the kind of models presented by parents to their children. Turning our discussion to the parental conduct models as far as delinquent activities are concerned, Sutherland believed that criminal behaviour was learned in interaction with other persons in a process of communication, the principal part of this learning occurring within intimate personal groups. To put it simply, when an individual is surrounded by persons who invariably define the legal codes he would assimilate this surrounding culture. On the other hand, when he is surrounded by persons whose definitions are favourable to the violation of the legal codes, he would imbibe these orientations.<sup>27</sup> What in effect is implied here is that criminal behaviour is a learned behaviour as is the conventional behaviour. And without underestimating the roles of school and neighbourhood, since plenty of learning takes place at home, the criminal activities of parents of which the child comes to know leave a solid imprint on him for imitation or 'emulation'.

Adducing studies to this point of view, the Gluecks, for example, found that 80.7 per cent of the 500 delinquent women\* had had criminal or deviant parents. In their later study† which compared 500 delinquents and 500 non-delinquents, the observations were that 66.2 per cent of the fathers of the delinquent children as compared with 32 per cent of the fathers of non-delinquents had a history of criminality, while 44.8 per cent of mothers of the

<sup>&</sup>lt;sup>27</sup>Sutherland and Cressey, op. cit., pp. 77-78.

<sup>\*</sup> Glueck, S. and Glueck, E., Five Hundred Delinquent Women, New York, 1934.

<sup>&</sup>lt;sup>28</sup>Schafer and Knudten, op. cit., p. 196.

<sup>†</sup> Glueck, S. and Glueck, E., Unraveling Juvenile Delinquency, Cambridge, 1950.

former as compared with but 15 per cent of the mothers of the latter had some history of criminality.<sup>29</sup>

In a very recent study<sup>30</sup> of 56 families which were referred to the Social Services Department of Birmingham for malfunctioning in terms of rent arrears, eviction, problems of school attendance, debts, etc., Wilson observes that "there is a very strong suggestion that parental criminality correlates positively with juvenile delinquency".

On the other hand, McCords<sup>31</sup> reanalysed the case records\* of Cambridge-Somerville Youth Study, and checked their later criminal records. They concentrated on three interacting variables in the familial environment of the boys, *i.e.*, the role models of the parents, the attitudes of the parents towards the child, and the methods of discipline used by parents. The following were some of the conclusions:

- 1. The effects of a criminal father on criminality in the son is largely dependent upon other factors within the family.
- 2. If paternal rejection, absence of maternal warmth, or maternal deviance is coupled with a criminal role model, the son is extremely likely to become criminal.
- 3. Consistent discipline in combination with love from at least one parent seems to offset the criminogenic influence of a criminal father.

Looking at these researches and from the welter of other available evidence, even if it is not possible to lay any relative emphasis on one or the other factor involved in parental socialisation of the child and genesis of delinquent behaviour, nonetheless we will still be fully justified in recognising their important influence. Growing up is difficult for any child and it is also a testing time for his parents. As trustees of their children's welfare, and not as owners, a great responsibility is cast on parents for communicating and transmitting the basic socio-ethical values of society of which they all are members. The child when being brought up in a chaotic emotional set-up, an atmosphere of low moral tone and erratic discipline from harsh to none at all, he will be severely handicapped in coping with the demands and pressures of adolescence and adulthood.

<sup>&</sup>lt;sup>29</sup>Sheth, op. cit., pp. 217-18.

<sup>&</sup>lt;sup>30</sup>Wilson, H., "Juvenile Delinquency, Parental Criminality and Social Handicap", British Journal of Criminology, Vol. 15, No. 3, 1975, pp. 241-50.

<sup>&</sup>lt;sup>31</sup>McCord J. and McCord, W., "The Effects of Parental Role Model on Criminality," *Journal of Social Issues*, Vol. 14, No. 3, 1958, pp. 66-75.

<sup>\*</sup> Observations were available of the day-to-day behaviour of 253 boys and their families, on an average for a five-year period. Twenty years later (the boys averaged seven years of age when the data collection was first started while their average age was twenty-seven when their criminal records were gathered) the criminal records of these boys, then adults, were examined.

#### Economic Status

Poverty in the family has been another perennially popular explanation for delinquency. A great deal of affirmative evidence in showing a close relationship between the two comes from almost all studies of 'convicted' offenders, both adults and juveniles. For instance, the Gluecks, in their three series\* of offenders found that as far as economic status went, the number of families below the 'comfortable level'† rose to the tune of 71.3, 71.2, and 91.3 per cent respectively.32 Sheth, in her study concluded that "about 70 per cent of offenders came from poor and very poor strata".33 Crime in India. 1973, (pp. 108-112) records that out of the 127,742 juveniles (7-21 years) apprehended for criminal law violations during the year, the information regarding economic status was available in 123,248 families: income in respect of 83 per cent of them was below Rs. 150 per month and there were only 452 juveniles belonging to the income group of Rs. 1,000 and above per month. Again, out of the total admission of 304 boys during 1974-1977 at the Chembur Children's Home, Mankhurd, Bombay34 the income level of the families of only 27(9%) was Rs. 150 and above per month. Such studies, however, have used police, court, or institutional records and although these bases may be adequate, within certain limitations, for an examination of 'official' delinquency or crime, they evidently cannot be considered reliable as an index of 'delinquent behaviour' in the general population.

It is also repeatedly said, and correctly so, that though most adjudicated delinquents belong to the lower economic class, the majority of the poor children do not become delinquents. Again, the conditions of affluence‡ are no sure safeguard against delinquency. Nonetheless, it will have to be recognised that although poverty per se cannot be the inevitable cause of delinquency, the economic factors are important. Poverty can engender

- \*1. One Thousand Juvenile Delinquents, 1934.
- 2. Five Hundred Criminal Careers, 1930.
- 3. Five Hundred Delinquent Women, 1934.

†'Comfortable level' was defined as possession of sufficient surplus to enable a family to maintain itself for four months without going on relief.

32Sutherland and Cressey, op. cit., p. 190.

<sup>33</sup>Sheth, op. cit., p. 243.

<sup>34</sup>Children's Aid Society, Bombay, Annual Reports, 1974-75, 1975-76, 1976-77.

‡ Economic growth in western countries while raising the living standard does not seem to have reduced crime rates. On the contrary, the preponderance of crimes against property is considered indicative of the tendency of these rates to rise in the most affluent countries. One view is that there "people steal, not because they are starving, but because they are envious... Paradoxically though, the trend toward increasing equality in the distribution of consumer goods generates expectations of further equality. (And when expectations are rising faster than the standard of living, the greater availability of consumer goods makes for greater than less dissatisfaction.

Toby, J., "Affluence and Adolescent Crime" in Cavan, R.S. (Ed.) Readings in Juvenile

Delinquency, Lippincott Co., Philadelphia, 1975, p. 119.

### anti-social activities

by its ultimate action, through ways often circuitous than plain, upon the inner mental life of the potential offenders. Unsatisfactory human relations emanate from destitution and poverty and the feel of inadequacy, frustration and emotional insecurity play their part in producing delinquency. It may cause under-nourishment and poor physical health which, in turn, may lead to a lowered mental resistance to the temptations that come one's way. Poverty-stricken families have very little choice in the selection of residential locality. Usually they live in slums where professional adult criminals concentrate, where living conditions are congested and play-grounds are either few or altogether absent, and where houses are too small to afford the comfort and privacy requisite for the development of self-respecting personality.<sup>35</sup>

Evidently, because of poverty and poor circumstances, the options of the children get severely limited. In families, generally larger than the average, with little living room and inadequate facilities, the children can become unwanted and driven to seek their recreations on the streets. The daily budgeting battle, often giving rise to fraved tempers between husband and wife, when there is very limited money to provide for the minimum basic necessities of food, clothing, education, etc., impose extraordinary strains on the family. The parents in such situation can take little or no interest in their children, even often to the point of neglecting them, although they may have affection for them. In such settings of extreme material shortages, and unbuffered by the parental care, attention, and guidance, children grow up in really chill wind. Further, because of lack of money, very often the reasonable demands of the school-going child are scoffed at and education becomes the first casualty. Khandekar, in her analysis of the reasons for dropping out from school, in Bombay, found that out of 390 respondents, 162 (41.5%) indicated the inability of their parents to continue providing necessary clothes, books, stationery, etc., as the principal reason.<sup>36</sup> Dropping out means more leisure and more free time may mean diminishing adult supervision as well as increased scope for developing undesirable associates.

Though poverty in itself may not be the sole culprit, the socio-economic accompaniments of poverty definitely have the capacity to lead a juvenile into committing delinquent acts. It cannot be said that the environment of poverty makes everyone a delinquent since there are plenty of people who come from such surroundings and grow up straight. But poverty does different things to different people and for quite a few of them its pressures can be among the important etiological variables.

35Sheth, op. cit., p. 241.

<sup>&</sup>lt;sup>36</sup>Khandekar, M., "A Study of Drop-Outs", *Indian Journal of Social Work*, Vol. 34, No. 4, 1974, p. 378.

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#### IN PROSPECT

During the present century though the behavioural sciences have no doubt made considerable progress in understanding motivations and pressures behind behaviour, there are still many lacunae to be filled. Researchers have come up with suggestions which seem to fit parts of the puzzle of delinquency but conclusions have not always been consistent on the various facets of causation. Particularly in our country the indigenous effort in understanding the phenomenon has been very insufficient: at least the conclusions put forward by western authors should be tested for their validity in our milieu. Although it seems legitimate to accept that deviations from normal family settings as broken homes, working mothers, faulty socialisation processes and parental models as well as insufficient income to provide for basic family needs can have dangerous influences on children there is an urgent need to judiciously put these into some kind of coherent order where different weights can be assigned to them depending upon the contributions they make to delinquent behaviour. Side by side, the state, and with its help private organisations, need to step in a big way to establish many more agencies like Neighbourhood Houses where sufficient space and activities are available nearer home for children and counselling services for them and their families. To at least prevent many of the school-going children from dropping out 'free education' will have to mean more than no fees: other educational necessities will require to be provided to the deserving. School social work, with adequate resources, can also go a long way in this regard.

# Children at Risk

Social services departments have been strongly criticised recently for not taking more effective action to protect children at risk... It has been suggested that in some cases concern for the family has been allowed to outweigh concern for the children who had suffered at the hands of their natural parents even while the social services departments and voluntary agencies attempted to help.

—Introduction to Social Administration in Britain, Muriel Brown, 1977

# Police Juvenile Bureau and the Administration of Child Care in India\*

P.D Sharma

HILD CARE is a developmental function of the welfare state. The welfare state, democratic or otherwise, must ensure social security and future well-being to all, especially to those who are in the tender years. The Universal Declaration of Human Rights proclaims that "childhood is entitled to special care and assistance." It is a paradox that every advancement of civilisation in the form of urbanisation and modernisation, (often confused with development) brings a fresh wave of tension to the lives of children, who represent the continuity of civilisation. In the so-called developed world of the west they are the victims of permissiveness, alcoholism and neurotic tension that threaten to destabilise family and marital relationship of the spouses.2 The agricultural societies of the third world may not have the problems of broken homes or children outside the wedlock to the same extent, but they face the grave problems of families in poverty, where children suffer the most. Of course, the village community in India, which usually acts as a check against waywardness, provides some sort of gainful employment to its children and most of them look after their younger kins, graze cattle and help parents and elders in their domestic chores. But then difficulties arise when parents decide to migrate, step parents take to ways of torture, relatives and acquaintances tempt them with a design to misuse, or accidents, diseases, calamities and superstitions leave them physically handicapped and mentally retarded. Naturally, the rural areas in India have a sizable number of identified and unidentified children, who, for one reason or the other, have to suffer a diseased or neglected existence. The callousness of society hardens their delinquent ways into a regular life of crime and social disapprobation. The street dwellers in cities provide a slum culture to their new born,3 who are inadvertently

<sup>1</sup>Universal Declaration of Human Rights (Text) Article 5.

<sup>3</sup>Ganguli, S.N., "Juvenile Delinquency and the Slums of Calcutta", Calcutta Police Journal, Vol. III, January-June 1955, No. 1 & 2, pp. 32-36.

<sup>\*</sup>The author is thankful to Shri S.C. Mishra, I.P.(retd.), his colleague in the Rajasthan Police Study Team for his valuable comments on the article.

<sup>&</sup>lt;sup>2</sup>For details see Report of Special Police Departments for the Prevention of Juvenile Delinquency by Interpol General Secretariat, London, 1960.

pushed to take to the life of crime, beggary and immorality. The dehumanising of the cities and the gradual disappearance of voluntary agencies for welfare activities help to add their share of cruelty to the lives of these innocent millions, who still lack the reason and strength of the body to play the 'brute game' of life in their pre-juvenile years.<sup>4</sup>

Studies in juvenile delinquency have identified innumerable factors that generate deviance and delinquent behaviour among non-adults. Lack of parental affection or over protectionism, mishandling, bad company, economic insufficiency, poor ethical inputs, impact of violent and sexy movies, tempting surroundings of vice-dens, torture, tutelage of the hoodlums and callous apathy of society can be enumerated as some of the potential variables against which all children need to be insured. The statistics about registered crime brings home the enormity of the problems in all countries. Similarly, the kinds of offences the juveniles are capable of committing and finding themselves involved are incredible and the annual steep rise of the graph is alarming. The Table below provides the picture of the juvenile delinquent world of India from 1966 to 1976.5

JUVENILES APPREHENDED

Year	Boys	Girls	Total	Per cent of Girls
1966	62,823	4,434	67,257	6.6
1969	74,092	4,776	78,868	6.1
1970	94,617	4,228	98,845	4.3
1971	97,887	5,432	103,419	5.3
1972	120,953	7,228	128,181	5.6
1973	122,192	5,550	127,742	4.3
1974	132,125	8,514	140,639	6.1
1975	132,587	9,312	141,899	6.6
1975	124,564	9,404	133,968	7.0
Per centage change over				
1966	+98.3	+112.1	+99.2	
1975	-6.1	+1.0	<b>-</b> 5.6	

Unlike India, the western world has shown tremendous awreness of the problems of juvenile delinquency which is qualitatively different in its content and manifestations. The Criminal Justice Act of 1948 in UK envisaged a

<sup>&</sup>lt;sup>4</sup>Panakal and Khalifa, Prevention of Types of Criminality ... in Less-developed Countries, United Nations Department of Economic and Social Affairs, New York, 1960. <sup>5</sup>Crime in India, Government of India, New Delhi, 1978, p. 99.

scheme of police attendance centres at police stations for the young.6 In France, the Surate Nationale, the Gendarmerie Nationale and the Paris Prefecture of Police cooperate with juvenile courts and the Surate Nationale has 33 juvenile squads with a compliment of 120 officers for combating the problem of delinquency in the major provincial cities and towns.7 In Germany WPK (Weibliche Polizei) Kriminal was established as early as 1930 and has been working as a police department for the juveniles in all the States of the Federal Republic.8 Vienna has a police youth hostel to house children below 16 pending disposal of their cases by law courts. Although there is no special federal police department for juveniles in USA, most of the States have juvenile aid bureaus, youth bureaus, and special service bureaus. As the police in UK and USA enjoys a discretion to send or not to send juvenile cases to law courts, the study reveals that on an average, out of 1700,000 cases annually handled by the US police departments, only 425,000 cases go before the juvenile courts.9 Japan is one country which has created an exclusive and central agency of juvenile police extending its organisation to all prefectures and police stations. The agency established in 1953 has proved extremely effective and useful<sup>10</sup> through its DPA (Delinquency Prevention Area) programmes, which on an average cover an area of 10,000 sq. kms. and a population of 35,00,000 citizens dwelling there.

#### LAWS CONCERNING JUVENILES

In India a dozen important Central laws exist, which deal with the problems of juveniles. In addition, there are scores of State laws which take care of the problems of children in their respective jurisdictions. The major Acts like IPC, Cr.PC, the Suppression of Immoral Traffic in Women and Girls Act, partially deal with the various facets of the problem, but other exclusive Acts like the Children's Act (LX of 1960), the Probation of Offender Act (XX of 1958), The Factories Act (LXIII of 1948) and the Orphanage and Other Charitable Homes Act (X of 1960) provide the broad frame within which the States have worked out their own supplements.

To meet the requirements of the aforesaid laws most of the States of the Union have created short term and long term institutions. The short term

<sup>6</sup>Radzenowiez L. (ed.), Attendance Centres, Cambridge Studies in Criminology, 1961, pp. 100-108.

Deb and Tiwari, "Role of Police in Combating Juvenile Delinquency", op. cit., p. 29. 8Ibid., pp. 29-30.

<sup>9</sup>Special Police Department for the Prevention of Juvenile Delinquency by Interpol General Secretariat, op. cit., 1960, p. 23.

10 Juvenile Delinquency and Juvenile Police in Japan", International Criminal Police Review, 131, Tokyo, October, 1959, pp. 237-43.

<sup>11</sup>The relevant clauses of some of these Acts are I.P.C. (Sections 82, 83 and 363A), Cr. PC (Sections 29 and 562), Factories Act, (Sections 23, 27, 67 and 71) Motor Transport Workers Act (Sections 21 and 24).

institutions are called by various names such as, remand homes, observation homes, reception homes, children's homes and auxiliary homes. These short term institutions provide immediate shelter and provisional care to the transients in the legal process. The long term institutions have a higher and a bigger objective of permanent rehabilitation and after care. They are known by varying names such as industrial schools, Borstal schools, reformatory schools, fit persons institutions, bal mandirs and vigilance homes in different States. In 1967 Maharashtra alone had 123 such long term institutions, Gujarat 28 and West Bengal and the Union territory of Delhi one each.<sup>12</sup> These institutions have facilities for liberal education upto VI standard and provide food, clothing, medical aid, indoor recreation and vocational training to their inmates falling in different age groups for varying lengths of time.

In the Indian situation when the law enjoins upon the state to look after the personality and health of the child, it does not entrust the police with any major responsibility in the area. The Central Social Welfare Board and its counterparts in the States, along with their other multifarious duties, look after the enforcement of the various legislations regarding children that exist on the statute books. In pursuance to some of the requirements of the laws. three distinct kinds of services for the juveniles, namely, (a) the juvenile courts. (b) the probation service, and (c) the aftercare and follow up services, have sprung up in varying degrees in the different States. These juvenile services come into play only when the juvenile is caught in an overt act. There is no concept of discovering a potential delinquent for purposes of reformation and removal of causes of delinquency. The approach is, by and large, bureaucratic and rule bound. In the absence of social orientation, the juvenile services appear on the scene or intervene only to discover that the juvenile has already hardened into a life of crime without any hope of resurrection. Due to lack of resources and manpower, the juvenile services at present are pressed into service only when the field agencies of the social welfare departments or the police stations in the district pass on certain specific and proven cases of potential delinquency to these institutions rendering the aforesaid services. 13 The metropolitan cities of Calcutta, Bombay and Madras have some of the best of these institutions and the most efficient juvenile services in the country, although their coverage and resources do not even touch the fringe of the colossal problem. The growing awareness of the task of reclaiming the erring children and their salvage from deviation is the basic police responsibility all over the world. No organisation other than the police can and should be more interested in checking on juveniles from becoming delinquents or in reforming them from their state of fallibility. The police stands to gain the most, if the juveniles are handled properly and are saved from a life of crime and vice in time. Notwithstanding its professional limitations and scanty

<sup>12</sup> Deb and Tiwari, "Role of Police in Combating Juvenile Delinquency in India", op. cit., p. 66.

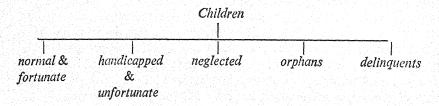
<sup>13</sup>Ibid., pp. 67-68, 36-39.

resources, the police organisation should come forward to undertake this job, even if it means more work and extra expenditure. The collaboration of other auxiliary agencies like the juvenile courts, the probation service, and after care homes of the department of social welfare can be ensured only when the police is entrusted with the legal responsibility. The impact of all these cumulative efforts under the aegis of the police alone can make a good beginning in the field of effective child care system in India. <sup>14</sup>

To involve the police in the administration of child care in a country like India requires a considerable conceptual clarity and organisational mapping. It is all the more necessary because the problems are unique and a very tall objective of child welfare is to be achieved with almost negligible resources and in the minimum possible time. The present paper moots the idea of the creation of a police juvenile bureau as a specialised unit of State and district police organisation with their field agencies in towns and cells in selective rural police stations, to coordinate the administration of delinquency. The suggestion has been examined in its totality and in the present context of overlapping functions and concurrent jurisdictions, leading to dyarchy and ultimate evasion of organisational responsibility.

### ADMINISTRATION OF DELINQUENCY

Children in any society are a prize possession of the family and no state, howsoever totalitarian, can take away the fundamental right of the child to demand family conditions for his/her upbringing. However, societies have problems and children can be broadly classified into various categories such as:

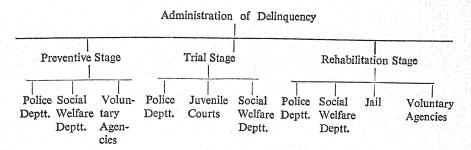


These categories, though nebulous, can be further broken into sub-categories on the basis of age, sex, social profiles and domicile. The social welfare departments, administering the Children's Acts and other allied pieces of social legislation, have an overall responsibility and must devise specialised agencies for these specific categories. The police organisation, which primarily deals with the control of crime and prevention of vice, has to be vitally concerned with the administration of delinquency, which, in practice, cannot

<sup>&</sup>lt;sup>14</sup>Fordetails see "Special Police Department for the Prevention of Juvenile Delinquency", a paper submitted to the U.N. Congress for the Prevention of Crime and Treatment of Delinquents by I.C.P.O., Paris, held in August 1960 at London.

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be separated from the administration of welfare of other kinds of children, namely, neglected, the handicapped and the orphan. Even in this very narrow and specific area of administration of delinquency, the police administration has to deal with the problem at three distinct stages, each stage involving the cooperation of other agencies, but leaving the initiative and even major responsibility of administration to the police. These stages and agencies are:



Obviously, police has a role at all the three stages, but its functioning in the field of removal of delinquency will be largely handicapped, if other agencies do not respond in time or if their efforts go uncoordinated. The present system of child care in most of the States is self-defeating largely because the administration of delinquency is very low in police priority and does not provide the necessary inputs to activise the working of other sister agencies in administration. The police, besides being a visible field agency. has a house to house coverage through its beat system of stations. It can and should play a key role at the preventive stage and also in the trial and rehabilitation of the known delinquents<sup>15</sup> The other agencies, like the voluntary organisations, juvenile courts and social welfare homes, etc., enter only at later stage. Their cooperation, assistance and specialised services are certainly of immense value to the police, but administratively speaking, it is only the police organisation which can and, hence, should be, duty bound to prevent and control the ever increasing quantum of juvenile crime in the country.16

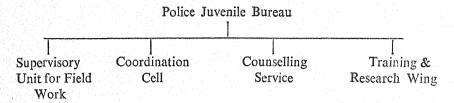
16Pakenham, Cause of Crime, London, 1959, pp. 141-45. Also see Von Hentig, Crime:

Causes and Conditions, 1947, London, pp. 103-8.

<sup>15</sup>After all the first contact of a potential juvenile is always with the Police. The poor conditions of Police Stations can shock the child beyond redemption. At present every juvenile delinquent has to go to the Police Station (for howsoever brief the period may be) before he is sent to the Children's Home. During investigation formalities he has to remain in the contact of traditional policemen, who are used to dealing with the hardened criminals only. It is highly injurious to the health of the Juvenile and there is a case that such children who have never been to a Police Station before, should be handled only by trained and sympathetic Police personnel of a specialised Bureau.

#### THE POLICE JUVENILE BUREAU

To accomplish this it is being suggested here that there should be a police juvenile bureau (PJB) at every State police headquarters, directly under the charge of a DIG police. The existing metropolitan units, notwithstanding their present status, may continue to be administered by their respective Police Commissioners, but they may be affiliated with the State PJB for their allied operations. Every urban town with a population of three lakhs and above should automatically be allowed to have the specialised unit of this bureau. The bureau may have its functional cells in the district office of the police under the SP, and, if necessary, some police officers may be earmarked for juvenile aid work in selected rural and urban police stations also. The PJB at the headquarters may have the following organisational structure:



Obviously, a similar organisation in a smaller or bigger form can be envisaged for the PJB at the district level and in the metropolitan cities also. The level of officials and the size of the various cells and wings or units may be worked out as per the functional needs of the new organisation.<sup>17</sup> Actually, it is a fallacy to contend that rural areas in India do not suffer from the scourge of juvenile delinquency. The PJB at the district should involve itself in the live problems of the field, while the headquarters organisation of the bureau should handle administrative problems and provide feedback to its district units. The actual organisation of the PJB at all levels will ultimately depend upon the functions which the State Government or the State police organisation will like to entrust to this specialised agency.<sup>18</sup> Broadly speaking, the following functions can be envisaged for the PJB at the police headquarters in the State:

The bureau should undertake prevention of delinquency at all levels

<sup>&</sup>lt;sup>17</sup>Juvenile Aid Bureau Manual, P.O. No. 180, The Bihar Police Gazette, September, 1961.

<sup>&</sup>lt;sup>18</sup>A Seminar on *Juvenile Delinquency: Role of the Police*, organised by CBI in 1966, recommented that 'In every city with a population of one lakh and more a special unit, headed by an Inspector of Police and consisting of adequate staff, including Women Police, should be created.... For cities with a population of five lakhs, there should be an adequate number of units under the charge of a Dy. S.P. The I.G.P. and the S.P. at the levels of the State and the District should have Advisory Committees and be assisted by a S.P. and a Dy. S.P. respectively. See Seminar Report by M.K. Jha, *Indian Police Journal*, Delhi, April, 1966.

and in all forms. It should conduct surveys, identify individual delinquent child and collect socio-economic data about his family background. It should direct the police station to maintain detailed records and send periodical and statistical reports about children: (a) delinquent, (b) likely to be delinquent, and (c) factors responsible for delinquency in each case. Similarly, information about truants, vagrants, children lost or missing, abducted or kidnapped, etc., may be collected at the district PJB for onward transmission to the State bureau. The bureau may take necessary steps to discover missing children and keep in touch with the families of the children, lost or kidnapped.

The PJB must undertake to initiate coordination work in the field of juvenile delinquency. It should invite periodic meetings of parents, social welfare officers and social workers, police officials, jail superintendents, probation officers and judges of juvenile courts to discuss common problems and identify the roles for each agency. The coordination cell of the PJB at both the levels should be in constant touch with these participants in the administration of juvenile delinquency and specific cases may be referred to the relevant agencies after their collective examination in the sub-committees of the bureau.

As juvenile delinquency is essentially a police problem and its unchecked growth has wider ramifications in the world of criminal justice, it will be advisable for the PJB to develop specialised counselling services and undertake consultancy work of a highly skilled nature. The bureau may have the services of trained psychologists, lawyers and medical jurists to advise its clients about problems of personality, habit, recidivism, rehabilitation, court cases and jail problems. The socio-legal counselling as a service for the juveniles can be one of the specialised and technical functions of the bureau, which the other agencies in the district and in the State may gainfully borrow, if and when required.

The bureau may undertake independent research studies in the areas of delinquency and correction. It may sponsor two separate kinds of training programmes, one for the police officers and social workers engaged in the task of prevention and correction of delinquency and another for the delinquent children, who may learn various kinds of useful arts during their training period to lead a meaningful life as adults in future. There can be combined and mixed training courses and the experience thus gained can be creatively used by researchers attached to the bureau.

The police juvenile bureau is not a very original or radical idea. The metropolitan cities of India are quite familiar with its working.<sup>19</sup> What is being

<sup>&</sup>lt;sup>19</sup>The Juvenile Aid Police Unit (JAPU) in Bombay, The Juvenile Police Aid Bureau (JPAB) in Calcutta and the Juvenile Aid Police Unit (JAPU) in Madras are headed by Deputy Commissioners of Police in Bombay and Calcutta and by Assistant Commissioner

suggested here is a scheme of making this specialised agency a part and parcel of the regular State police administration—urban as well as rural. The bureau may be an administrative agency to begin with, but it can be envisaged as a growing centre of multifarious activities through all sorts to attached institutions and technical branches for specialised jobs. Looking to the delicate nature of the emotional problems that the juvenile world has, it can be contended that such bureaus should increasingly be placed under the charge of motherly women. As a feminine preserve, they can certainly prove more purposive and the absence of masculine callousness can positively contribute to their enhanced efficiency and goal getting.<sup>20</sup>

#### CITIZEN POLICE

It is a truism to say that the police organisation in India today has neither an adequate coverage nor the requisite expertise to undertake these additional and difficult functions. Finding their own house in disorder and now under fire, it is understandable that senior police officers do not want to overburden their organisation with functions in a field alien to the cops, Similarly, some of the agencies of the State social welfare departments, which quite recently have entered into this vacuum are gradually developing vested interests in the game. They do not have a field organisation or a beat system with positive functions to enforce social legislation, but may not like that the police should step in into the domain which they presently administer with impunity. The usual arguments of police corruption, overwork, police culture, police company and third degree methods used by police are the alibis to sabotage action. The fact of the matter is that juvenile delinquency is a growing menace in a modernising society like India and only a different kind of police with knowledgeability and commitment can hold a satisfactory answer to the vexed question.21

The students of criminal justice in India know that social welfare departments of the States are ill-equipped and ill-organised to deal with the problems

# (Continued from p. 665)

of Police in Madras. Their common functions are enforcement of the Children's Acts, patrolling of delinquency areas, including picking up of destitutes and restoration of runaway children to parents, conducting of field enquiries and surveys and undertaking parent counselling. Their staff maintains close liaison with reception homes and boys clubs. However, investigation of crimes committed by Juveniles continues to be the responsibility of the local police in all the metropolitan cities. Deb and Tiwari, Role of Police in Combating Juvenile Delinquency in India, op. cit., pp. 36-41.

<sup>20</sup>It is noteworthy that more than half of the juvenile bureaus in USA have police women on their staff. Male police officers usually deal with the work of law enforcement, while the police women look to the preventive aspect of police duties in relation to juveniles.

<sup>21</sup>See Report of the Seminar on Juvenile Delinquency: Role of the Police, organised by Central Bureau of Investigation, at Vigyan Bhawan, New Delhi from November 25 to 27, 1965.

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of delinquency effectively. They already have their hands full with assorted problems of all categories of children—neglected, diseased, handicapped and orphaned. In the absence of an effective machinery in the field, the legislation pertaining to children is observed more in breach and the police does not feel concerned or duty-bound to take cognisance or action in the matter. The poor enforcement of Children's Acts and other laws lies at the root of the malady. which ipso facto renders other agencies as simply dysfunctional.22 The creation of the PJB at the district levels and the State headquarters can provide the much needed mechanism to initiate action and coordinate efforts, which do not yield desired results today. With an adequate machinery in its own organisation and exclusive legal responsibility, the police will take more interest in the preventive rather than in the correctional aspects of juvenile delinquency which alone can save the child from undesirable exposures and retrieve him without causing injury to his personality. Moreover, it will improve the police image suo motto because positive functions like child care, when handled by expert police women, will happily shock the society in appreciating the new role of the police.

Similarly the participation of policemen and policewomen of the bureau in after-care programmes through boys clubs and recreation centres, etc., till the delinquents attain a certain age or find some employment, will positively contribute to the fair image of the police organisation. The involvement of the police along with voluntary agencies and other social service organisations in the total child care programmes will project the police in its new image of a citizen police. It is quite understandable that the present policemen will find it embarrassing for some time to work in this new area, but gradually the experience will reveal that the job is not only exciting, but highly challenging and satisfying as well. Similarly to a layman, the achievements of the PJB in a State may not look very spectacular, but its long range impact upon the patterns of future crime and profiles of future criminals will be worth the experiment. After all, the police cannot afford to take an ostrich like attitude towards crimes involving children in tender age groups. It has to equip itself for the problems of the future and the establishment of police juvenile bureaus in the State police organisations of the country will certainly be an appropriate and worthwhile gift from the present generation of police reformers to the posterity in the International Year of the Child.

<sup>&</sup>lt;sup>22</sup>See relevant parts of the Report of the Central Social Welfare Board, Ministry of Education and Social Welfare, Governmet of India, New Delhi, 1978.

# Child Labour in India: Size and Occupational Distribution

#### Malabika Patnaik

THE HIGH incidence of child labour in India is not only shocking from the moral point of view, but also represents a waste of vast human resources, which instead of being improved upon through education and training is utilised in a most unproductive and wasteful manner. This paper makes an attempt at giving a statistical outline of the incidence of child labour and its occupational distribution over the period covered by the census of 1961 and 1971. Statewise and industrywise analysis is deliberately left out to limit the scope of the paper, the aim being simply to state the magnitude of the problem and show the inefficacy of the existing laws relating to child labour.

With 13 million infants added every year<sup>1</sup> India has achieved the distinction of having one of the world's youngest populations. The 1971 census showed that 42 per cent of the Indian population consists of children under 15 years of age. In the 1951 census it was 37.5 per cent (Table 1).

TABLE 1 CHILDREN (0-14) AGE GROUP IN TOTAL POPULATION

		1951			1961			1971	
( )	Person	Male	Female	Person	Male	Female	Person	Male	Female
India									
(in million)	134	69	65	180	92	88	230	119	111
Per cent	37.5	19.3	18.2	41.02	21.00	20.02	42.01	21.01	21.00
Rural									
(in million)	N.A.	N.A.	N.A.	149	76	73	188	97	91
Per cent				34.01	17.45	16.56	34.25	18.15	16.1
Urban									
(in million)	N.A.	N.A.	N.A.	31	16	15	42	22	20
Per cent				7.01	3.65	3.36	7.76	4.11	3.5

Source: Census 1951, census 1961 and census 1971.

While the entire population of India in 1911 was 252 million, projections indicate that children alone already numbered 248 million in 1976 and a

The writer expresses her gratitude to Dr. K.N. Kabra and Shri Pranab Banerjee for their most considerate help and useful suggestions.

<sup>1</sup>The Child in India, UNICEF Publication for the Government of India, 1979.

more recent estimate puts the child population in 1977 at 252 million.2

The 1961 census shows that out of the 41 per cent children, 34 per cent lived in the rural areas while only 7 per cent belonged to urban areas. The 1971 census showed the same concentration except for urban child population rising from 7 per cent to 8 per cent.

#### INCIDENCE OF CHILD LABOUR

The important sources available for estimating the incidence of child labour are:

- 1. Census data
- 2. N.S.S. data
- 3. Agricultural and rural labour enquiries.

The study conducted by the Labour Bureau on child labour dates back to 1953-54. The report of the National Commission on Labour 1969 has only touched the problem. Thus the census remains the only source for basic data.

The 1971 census listed 10.7 million children as workers, but independent estimates such as ILO reports and the report of the National Commission on Labour indicate that the total child labour force may be much higher than the quoted figure. An analysis of the census data itself suggests that child labour could be under-reported. We will come to it shortly. However, according to the 1971 census, children easily constitute about 6 per cent of the total labour force in the country (Table 2) and this makes India top in child labour.

TABLE 2 CHILD WORKERS (0-14) AND THEIR PROPORTION IN TOTAL WORKERS

		1961			1971	
	Person	Male	Female	Person	Male	Female
India (in million)	14.5	8.7	5.8	10.7	7.9	2.8
Per cent	7.6	4.6	3.0	5.9	4.3	1.6
Rural (in million)	13.7	8.1	5.6	9.9	7.2	2.7
Per cent	7.2	4.3	2.9	5.5	4.0	1.5
Urban (in million)	0.8	0.6	0.2	0.8	0.7	0.1
Per cent	.4	.3	.1	.4	.3	.1

SOURCE: Census 1961 and Census 1971.

The number of child workers in 1971 census was 10.7 million as against 14.5 million in 1961, showing a decline of 3.8 million. This steep decline in

<sup>2</sup>The Child in India, op. cit.

the face of a rising population poses a puzzle. But if we compare the decline of child workers with that of the total workers and the total non-child workers (total workers minus total child workers) we can find some plausible explanation for it. While the percentage decline in total child workers from 1961 to 1971 was 26.21, the decline in total workers from 1961 to 1971 was 4.77 per cent and that of total non-child workers was 2.98. Granted that the definition of 'worker' had changed from 1961 census to 1971 census<sup>3</sup> it must have applied uniformly to all age groups. So the abnormal decline in child workers (26.21 per cent) as against 4.77 and 2.98 per cent in case of total workers and non-child workers, even after taking into account the changed definition, suggests the possibility of child labour being under-reported in the 1971 census.

Moreover a careful look would suggest that in rural areas the decline in child labour was marked (3.8 million) in contrast to the constant figure in urban areas (Table 2). The decline in case of female child labour is also much more marked (3 million) whereas for males the decline was negligible (0.8 million). This decline in the rural child workers and female child workers can be explained by the changed definition of 'worker' in the 1971 census as compared to the 1961 census. In the 1971 census a worker was defined as one whose main activity was production of 'goods and services' which meant that a large number of children (as well as females) fell under the category of 'non-workers' for their main activity was now categorised as 'household work' or 'studentship' or as merely 'dependents'. This would imply that a large number of child workers who were engaged in seasonal, casual or subsidiary employment are not included in the workers' category.

TABLE 3 PERCENTAGE OF CHILD WORKERS IN TOTAL CHILD POPULATION

		Person	Male	Female
India	1961	8.03	4.82	3.21
	1971	4.67	3.42	1.25
Rural	1961	7.6	4. 5	3.1
	1971	4.34	3.17	1.17
Urban	1961	0.43	0.31	0.12
	1971	0.33	0.25	0.08

SOURCE: 1961 & 1971 census data.

An idea of the change in child participation rates during the decade 1961-71 may however be obtained from the data collected under NSS in their

<sup>&</sup>lt;sup>3</sup>(i) The reference period was reduced from a fortnight in 1961 census to a week in 1971 census for regular labour.

<sup>(</sup>ii) The definition adopted for a 'worker' was made more rigorous in 1971 than what it was in 1961 as "producing goods and services".

<sup>(</sup>iii) The reference period for seasonal labour was one year in 1971 whereas it was throughout the greater part of the working season in 1961 census for a person doing regular work of more than one hour a day in the period.

16th (July 1960-June 1961) and 27th (October 1972-September 1973) rounds:

Sex-Age	Specified	Labour	Force	Participation*
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Sex Age	Group	$R\iota$	ıral	Ur	ban
	Group	1960-61	1972-73	1960-61	1972-73
Male 5	i-9	3.28	2.57	0.52	0.84
10	-14	32.73	26.33	11.69	10.16
Female 5	-9	2.40	1.94	0.73	0.38
10	1-14	22.97	19.97	6.79	5.83

<sup>\*</sup> Defined as the percentage ratio of the estimated number of persons in labour force belonging to a specific sex-age combination to the total population of that sex-age combination.

The data in the Table suggest that the participation rates of child labour have declined both among males and females as well as in the rural and urban areas but not to the extent the census data suggest.

#### CHILDREN IN PRIMARY SECTOR

Out of the 10.7 million listed as child workers in 1971, 87 per cent were engaged in primary activities. The break-up is as in Table 4: 36.05 per cent as cultivators, 8.25 per cent in livestock, forestry, fishing and plantation and 42.70 per cent as agricultural labourers. Only among this group together with 'cultivators' group the female participation rate is higher than the male participation rate (corroborated by Table 5 also). This is perhaps because the family based economy gives more importance to the participation of young girls than of boys of the same age group. In the secondary sector, the participation rate of child labour is 6.87 per cent, most of it in the manufacturing, processing and servicing industry. Household activities claim 3.15 per cent while non-household activities have 2.94 per cent of child labour. In construction and mining activities though their percentage is 0.22 and 0.56 respectively it shows that tender hands are not altogether exempted from such strenuous activities. The tertiary sector which comprises of trade and commerce, transport, storage and communication and 'other services' recruits 6.13 per cent of its labour force from the 0-14 age group.

A comparison of the 1971 census data with the 1961 data would show that the proportion of child labour has gone up from 80.35 per cent to 87 per cent. This increase is inspite of the difference in classification of the two censuses. In the 1961 census mining and quarrying was combined with the 3rd classification, *i.e.*, 'livestock forestry and allied activities' whereas in the 1971 census the former was made separate. This goes to show that the absorption capacity of child labour in the non-primary sector is low. Hence the labourers

Table 4 SECTORWISE DISTRIBUTION OF CHILD WORKERS BY ACTIVITY AND SEX

			; <b>`</b>					1971		
**************************************	Total	Male	Female	Rural	Urban	Total	Male	Female	Rural	Urban
. Total child workers	100	100	100	100	100	100	100	100	100	100
2. Cultivators	51.10	48.62	54.87	53.53	9.80	36.05	39.64	26.15	38.41	5.78
<ul> <li>Livestock, forestry,</li> </ul>	7.19	9.64	3.51	7.28	5.60	8.25	9.43	4.99	8.58	4.02
fishing, plantation, mining	ະກ									
and quarrying 4. Agricultural Labour	22.06	20.17	24.89	22.89	7.72	42.70	38.10	55.44	44.89	14.56
Primary Sector	80.35	78.43	83.27	83.70	23.12	87.00	87.17	86.58	91.88	24.36
. Mining and Quarrying						0.2	0.17	0.31	0.20	0.49
<ol> <li>Manufacturing Processing (a) Household</li> </ol>	g 10.73	10 68	7	3	<b>(</b>	•	(	1	(	
(b) Non-Household		7 14	70.0	9.78	18.42	3.15	2.52	4.8/	7.60	10.18
7. Construction	0.46	0.50	0.38	0.70	17.0s	2.94	3.04	2.61	1.42	22.45
Secondary Sector	12.36	13.32	10.95	10.85	36 60	20 9	000	07 0	02.7	01.0
0 71				20.01	20.00	0.07	00.0	0.40	4.30	30.77
Trade and Commerce	1.07	1.48	0.42	09.0	8.78	1.97	2.50	0.49	0.83	16.63
<ol> <li>Iransport and Storage and Communication</li> </ol>	0.17	0.24	0.04	0.07	1.70	0.38	0.45	0.21	0.13	3.69
10. Other Services	6.05	6.53	5.32	4.78	27.80	3.78	3.58	4.32	2.58	19.10
Tertiary Sector	7.29	8.25	5.78	5.45	38.28	6 13	6 53	\$ 00	2 54	20.42

SOURCE: Calculated from 1961 and 1971 census data.

TABLE 5 DISTRIBUTION OF 1000 WORKERS IN EACH INDUSTRIAL CATEGORY IN (0-14) AGE GROUP

		Name and Address of the Owner, where the Parks of the Owner, where the Owner, which is t				700	
		1961			1971		
Sl. Industrial Category No.	No. of children per 1000 workers in each category	No. of male children per 1000 male workers in each category	No. of children No. of male No. of female per 1000 workers children per 1000 in each category male workers female workers in each category in each category	No. of children per 1000 workers in each category	No. of children No. of male No. of female per 1000 workers children per 1000 children per 1000 in each category male workers female workers	No. of female children per 1000 female workers	
Cultivators     Agricultural Labourers     Livestock, forestry, fishing, hunting, plantations, allied activities	74 101 199	64 101 208	96 101 170	50 97 206	45 45 95 212	un each caregory 81 100 182	
4. Mining and quarrying 5. Household Industry 6. Non-Household Industry 7. Construction 8. Trade and Commerce 9. Transport, Storage and Communication	123 30 33 20 8	126 26 24 24 19	119 70 93 30 34	25 53 30 27 21	18 40 21 21 21 8	71 105 86 85 25 41	
10. Other Services	45	38	70	26	77	55	
SOURCE: 1901 and 19/1 census data.	s data.						

of this age group find no other alternative but to overcrowd the agricultural sector.

Since the classification of population in the 1951 census was according to livelihood (as 'self-supporting person', 'earning dependent' and 'non-earning dependent') in contrast to the 1961 and 1971 census, where the categories were 'workers' and 'non-workers', it is not possible to find out the work force coming from the 0-14 age group. Hence a comparison of the 1951 census with 1961 and 1971 census is not attempted in the paper. Over the past one decade, therefore, for which data is available, the position of child labour has barely improved. The marked decline in the employment of children in the secondary sector (from 12.36 per cent in 1961, it fell to 6.87 per cent in 1971) and the increase of child labour in the primary sector (from 80.69 per cent in 1961 to 87 per cent in 1971) prima facie suggests that more children are being pushed into the primary sector, the secondary sector being a taboo for them by law. Of course, this hypothesis that the Factories Acts<sup>4</sup> have diverted child labour to other activities cannot be conclusively proved on the basis of available data. but the fact remains that increasing incidence of child labour in the primary sector means increasing marginalisation for the child labourers, for wages in the sector is low. Working conditions in the unorganised sector are also equally bad, for they do not come under the purview of the various child protection laws that have been enacted from time to time. Thus most child workers remain outside the scope of protective legislation and continue to be exploited.

According to the 1971 census data about 93 per cent of child workers belong to the rural area. They constitute 5.3 per cent of the total rural child population. The 7 per cent of child workers found in urban areas constitute 6 per cent of the total urban child population.

#### MIGRANTS' CHILDREN

Migrants seem to encourage early employment of children. Data indicate that as many as 80 per cent of the children of migrants are workers. This is four times higher than the rate among settled population. Most of the child labourers in urban centres are the uncared for children of migrants who have been suddenly catapulted from the rural obscrurity to the congested urban slums and the children have no option but to go with the parents in search of work.

The high incidence of child labour in a country like India, which swears by welfare principles and a socialistic pattern of society, suggests that the economy is still in the initial phase of industrial revolution which Britain was going through two centuries back, when the 'Poor Laws' were in vogue. Not-

<sup>&</sup>lt;sup>4</sup>The Factories Act, 1948, which prohibits employment of children below 14 years age has been amended from time to time keeping in view the welfare of the children.

<sup>5</sup>The Child in India, op. cit.

withstanding all the labour laws<sup>6</sup> that have been enacted relating to children from time to time in keeping with the spirit of the U.N. declaration of the rights of the child, the vast majority of our children continue to languish for want of food, shelter and security—added to which is the heavy burden of work they have to undertake under sheer economic pressure. Marx's<sup>7</sup> analysis of the economic and juridical conditions of 17th century England where the reserve army of labourers<sup>8</sup> had no choice but to offer their labour to the employer, who had all the choice to employ whomsoever he pleased, gives us a better insight as to why children were preferred in factories instead of adults. Those were the days of surplus expropriation based largely on absolute surplus value<sup>9</sup> and the subsistence level of children being low, it was natural that children were forced to work in certain factories. The workers who were given a choice between starvation and exploitation naturally had no qualms in sending their young children to fend for themselves.

Of course, as far as the legal conditions are concerned, India has come a long way and unlike the early industrialisation stage in England, today we have a host of laws forbidding the employment of children in avocations unsuited to their age and strength and a number of protective legislations safeguarding their interest, health, etc. But protection by the law alone does not help. In a large number of cases where it is a choice between starvation and exploitation the child is forced to succumb to the latter since there is no formal and governmental social security measure or protection against starvation in the country. Widespread poverty and destitution therefore seems to be the root cause of such high incidence of child labour.

A study report by the National Institute of Public Cooperation and Child Development in Bombay has brought out important findings on the reasons that compel children to take to employment. They are:

장생님은 모르겠다. 그리고 보고 전통하고 하면 이번 경우로 즐겁니다.	Per cent
Lack of employment/inadequate family income	63.2
Natural calamities	7.6
Uneconomic holdings	6.6
Loss of earning members	15.7
Better job prospects	6.9

Thus all evidence points to economic compulsion being the major factor behind children taking up jobs and this is reflected in the relationship between child labour and non-schooling amongst the poor.

If one attempts to fit a correlation between the incidence of child labour

<sup>6</sup>Apart from the Factories Act, 1954, there has been Plantations Labour Act, 1951, Mines Act, 1952, Indian Merchant Shipping Act, 1958, Motor Transport Workers Act, 1961, Bidi & Cigar Workers Act, 1966, etc.

7 Capital, Vol. 1, 'The Greed for Surplus Labour', Chapter X, Sec., 1, 2, 3.

8Capital, Vol. 1, Ch. XXV, Section 3, p. 628.

<sup>9</sup>See Engels The Conditions of the Working Class in England, Oxford, Ch. VII & VIII, and Capital, Vol. 1, Ch. XVI, pp. 508-520,

and the low level of literacy in that age group one finds the correlation coefficient to be significant and negative (—0.71)<sup>10</sup> which makes a *prima facie* case for raising the level of literacy among the population in order to bring down the incidence of employment of children. But a closer look at the enrolment ratio on the one hand and dropouts on the other goes to prove that even though public expenditure on education has increased, the opportunity borne by poor parents by sending their children to school has remained high enough to frustrate any educational expansion programme. The data below give a profile of the enrolemnt ratio and dropout ratio for males and females in the 0-14 age group.

In 1960-61 approximately 19.2 million students were enrolled in primary classes. During the decade 1961-71 about 22.5 million additional children were on the roll of classes I-V. But if we see the annual rate of enrolment in primary education it has been lower than the annual rate of growth of population. Only 80.9 per cent of children in the 6-11 age group and 37 per cent in the 11-14 age group are enrolled in the schools. The enrolment level for girls is much lower than that for boys. While the enrolment of boys of the 6-11 years age group is 97.5 per cent it is only 63.5 per cent for girls of that group. In the 11-14 years age group, the enrolment of boys is 48.7 per cent but that of girls is only 24.5 per cent. The gap widens further at the high school level (14-17 years) with enrolment of boys at 28.8 per cent and that of girls at just 12.3 per cent.

Coming to dropout rates, out of every 100 children who enter class I less than half complete class V and only 24 complete class VIII. The dropout rates for girls is much higher. Out of every 100 girls who join class I only about 30 reach class V. Thus 70 per cent of girls who get enrolled leave school without attaining functional literacy.

In rural areas again the dropout is much higher than in urban areas as brought out by the Committee on Labour Welfare. It's the clash between timings and periodicity of the school system and those of agricultural operations which results in permanent withdrawals, whereas, in the urban areas, the reasons given for discontinuing studies are<sup>12</sup>:

	Per cent
Could not meet school expenses	33.0
Death/disease of parents	12.4
Pressure of household chores/had to help family in business	7.3
Lack of interest in studies/ill-treatment of teachers	34.9
Others	12.4
	100.00

<sup>&</sup>lt;sup>10</sup>K.C. Seal, 'Children in Employment', Unpublished Paper.

<sup>11</sup>The Child in India, op. cit.

<sup>&</sup>lt;sup>12</sup>'Study of Working Children in Bombay'—A Study Report by the National Institute of Public Cooperation and Child Development, New Delhi, 1978.

Thus in a majority of the cases it is poverty more than anything else that compels parents to send their children to work instead of sending them to school. Added to the income foregone, is the relatively high private costs of primary education that discourages parents from sending their children to school. Thus education has become dysfunctional to this vast poor section of our population.

The statistical Tables show the magnitude of the problem though the poor conditions under which children work is something which figures can never capture—though it is a familiar sight everywhere of young children constantly on their toes as helpers in restaurants, farms, workshops, as shoeshine boys, vendors, construction helpers—their over-worked and resigned looks speak volumes of their wretched living conditions.

True, there has been a host of legislation for improving the conditions of these children. But since the root cause of the problem is poverty, the official policy of forbidding children to work does not solve the problem, it simply shifts the centre from the organised to the unorganised sector. Raising the educational level also cannot act as a deterrent to such a phenomenon, for the very reasons that compel them to take to work also prevents them from going to school. Hence mere legislations and regulations will only remain as palliatives unless the problem of poverty and destitution is tackled on a war footing so as to eradicate it.

# Minimum Age for Employment

This International Year is of special importance to the ILO, which, ever since its foundation in 1919, has sought to restrict child labour and provide protection for children. In doing so, the ILO has acted in accordance with the principle set forth in the United Nations Declaration of the Rights of the Child — that a child has a right to protection against exploitation. Despite the efforts made by the ILO and by many countries which have laid down regulations on the minimum age for admission of children to employment and on the conditions of employment of children, child labour is still widespread and a disturbing problem in many parts of the world where poverty and tradition have precluded its elimination.

-Declaration, ILO Governing Body, 1979.

# Occupational Needs and Pre-Employment Training of Non-Students

K.S.R.N. Sarma

THIS PAPER attempts to highlight some of the problems involved in organising training and employment services for the non-students. The term 'non-student' is used to refer to the child of school going age, i.e., 6-17 years, who is not continuing education. It covers both the children who never pursued education either at school, at home or elsewhere and also those, who after attending school or pursuing education for some time, discontinued it. The non-students are usually classified into three age groups corresponding to the school levels in which they would have been, had they continued their education without a break, i.e., 6+ to 10 years; 11+ to 13+ years; and 14+ to 17+ years, corresponding to primary, middle and secondary school levels respectively. Another classification of non-students in vogue is on the basis of their educational attainment, like illiterate, literate with no formal education, primary, middle or secondary school studied.

#### MAGNITUDE OF THE PROBLEM

Statistics regarding non-students, their number, age classification, etc., are not readily available. However, a rough idea about the magnitude of their problem in the country could be had from the data given in Table A.

From the table it is clear that the proportion of non-school going children is very high and it is particularly acute at the secondary school going age of 14 to 17 years. One could also notice that even though the percentage of enrolment at the primary school level is relatively high, the pupils drop out as the years pass by. This could be better explained by taking a hypothetical situation. Suppose all the children who were enrolled in primary schools in 1970-71 continued their education without break. By 1975-76 they should be in middle school or above. The school enrolment at middle level then should have been around 78 per cent, i.e., the same as the percentage enrolment at primary schools level in 1970-71. But in actual experience the percentage is only37<sup>1</sup>, which

<sup>1</sup>Annual Report, 1975-76, Government of India, Ministry of Education and Social Welfare, Department of Education, p. 3.

TABLE A. NUMBER OF NON-STUDENTS-ALL INDIA

School level and age group		entage en chools in i				centage nent in 1979	of no	nated nu n-studer (f) (in m	its in
	1960- 61(a)	1970- 71(b)	1977- 78(c)	Persons	Boys	Girls	Persons	Boys	Girls
Primary (6-10 yrs.) Middle	62	78.6	82.8	85(d)	101	68	13.04		13.04
(11-13yrs.) Secondary	23	33.4	37.9	40(d)	51	27	29.17	12.28	16.89
(14-17 yrs.)	11	18.5	N.A.	25(e)	35	15	45.80	20.01	25.79

#### SOURCES:

- (a) Fourth Five Year Plan (Draft), New Delhi, Government of India, Planning Commission, p. 294.
- (b) Education in India, New Delhi, Government of India, Ministry of Education and Social Welfare 1978, pp. 183, 185 and 187. The break-up of school enrolments in respect of boys and girls at different school levels in 1970-71 is as follows:

#### Percentage of enrolment

School level	Boys	Girls	Total
Primary	95.0	60.5	78.6
Middle	46.0	19.9	33.4
Secondary	26.8	9.8	18.5

- (c) Annual Report of the Ministry of Education and Social Welfare, Department of Education and Culture, Government of India for the year 1978-79, page 3.
- (d) The Draft Sixth Plan report gives the estimates of school enrolment in 1977-78 as follows:

#### Percentage of enrolment

School level	Boys	Girls	Total
Primary	101	68	85
Middle	51	27	40

Vide: Draft Five Year Plan, 1978-83, New Delhi, Government of India, Planning Commission, 1978, p. 227.

- (e) The target for enrolment at the secondary level for the year 1978-79 as given in the Fifth plan document (Vide, p. 76 of the Report) is 25 per cent. The enrolment percentages in respect of boys and girls are worked on the basis that out of 100 girls that enter class I, only 40 complete class V and about 25 complete class VIII (vide, Annual Report of the Government of India, Ministry of Education and Social Welfare, for the year 1978-79 op. cit., p. 24-25).
- (f) The total number of children in the school-going age in 1979 was worked with the help of the data available in the Report on Population Projections worked out under the guidance of the Expert Committee set up by the Planning Commission under the chairmanship of the Registrar General, India.

New Delhi, Office of the Registrar General, Ministry of Home Affairs, Government of India, 1969.

means about 50 per cent of the children who were on the rolls in the primary schools in 1970-71 dropped out before they reached the middle school stage. Similarly, dropouts are high from middle to secondary school levels. The various surveys conducted in the field support this observation. The Education Commission reported that in a survey carried out on school-dropouts in Poona city, out of 1,000 children who had enrolled in class I, as many as 414 had left the school before they reached class IV.<sup>2</sup> In a study conducted by the National Council of Educational Research and Training in Maharashtra, Punjab, Rajasthan, Delhi and Himachal Pradesh<sup>3</sup> in the schools run by the State Governments and municipal corporations the rate of stagnation and wastage was observed to be as high as 78.35 per cent before the pupils reached class VIII.

#### FACTORS CONTRIBUTING TO THE NON-STUDENT PHENOMENON

A number of factors are observed to contribute to the phenomenon of non-students. They are generally classified into three: economic, educational and socio-environmental. The economic factors are very obvious. In a country where a large percentage of population lives just at the subsistence or below the subsistence level, parents find it difficult to provide for the cost of education of their children. Though schooling is free upto primary and middle school levels in most of the regions, sending a child to school would mean expenditure (for the parent) on his clothing, books, etc. Further, as a child grows, he is a potential contributor; however meagre his earnings be, it would be an addition to that of the family. As rightly observed by the Education Commission:

A child is willingly sent to school between the ages 6 and 9 because at this stage he is more a nuisance at home than help. After the age of 9 or 10 the child becomes an economic assest because he can work at home or earn something outside. This is especially true of girls who have to assist the overworked mother at home. The child is, therefore, withdrawn from the school.<sup>4</sup>

From the educational point, the chief factor contributing to the phenomenon of non-students, again to quote the Education Commission, is the 'lack of articulation between education and life', *i.e.*, the failure of the present educational system to gear up to the developmental needs of various manpower

<sup>&</sup>lt;sup>2</sup>Report of the Education Commission 1964-66, New Delhi, Government of India, Ministry of Education, 1966, p. 157.

<sup>&</sup>lt;sup>8</sup>Wastage and Stagnation Primary and Middle School in India, National Council of Educational Research and Training (NCERT), 1969.

<sup>&</sup>lt;sup>4</sup>Report of the Education Commission, 1966, op. cit., p. 159.

requirements. Some other irritants in the present educational system contributing to non-students or student dropouts are inadequate trained teachers and inadequate facilities at schools such as teaching aids, play material, etc., to attract the child to school and make him hold on to it. Also the system has no provision for lending support in adequate measure to those who lag behind in studies and bring them on par with others.

Important among the socio-environmental factors are the lack of proper appreciation of the school work by the parents and also of the advantages that accrue to their ward by allowing him to continue his schooling. Early marriage of girls, opposition in some communities to sending girls to coeducational schools, inadequate facilities at home, particularly in the case of pupils from low income families, to do home assignments given to them by their teachers, lack of supervision from elders are all factors that make the pupils from the poorer sections look away from schools.

Thus it is evident that a long term solution to the problem of non-students lies in the economic development of the country itself<sup>5</sup> But since the problem under consideration is concerning the welfare of a sizable segment of the future labour force, it does not appear to be advisable to postpone the attempts to control it for, as the years pass by, it may get more and more difficult to tackle. A number of measures have already been taken under various developmental schemes to bring down the percentage of non-student population in the country such as opening more schools, revising the school curricula, introducing craft-classes, distributing school books and uniforms free to the deserving students, serving mid-day meals, promoting schemes for better nutrition, arranging vocational training and guidance, etc. These measures can be divided into two broad categories on the basis of the immediate objective they intend to serve. The first is of those which aim to bring the non-student back to the school and the second is of those which help a non-student to get a remunerative employment by equipping him with suitable skills and with placement service.

# PROGRAMME OBJECTIVES FOR NON-STUDENTS OF DIFFERENT CATEGORIES

It is generally agreed that in the case of non-students below the age of 11, the objective of all welfare programmes covering them should be to bring them back to the general school curricula. This has to be so because in one of the directive principles of state policy of the Indian Constitution (Sec. 45) it has been laid down that all children below 14 years of age be provided with free school education. In the case of non-students above 11 but below 14 years the aim of welfare programmes should also be to retain them in the general school, but provide them an option in their school curriculum, if they so desire, to

<sup>5</sup>Report of the Education Commission, 1966, ep. eit., p. 157.

equip themselves with some occupational skills so that once they reach 14, the age at which they are legally permitted to take up employment, they can go in for some remunerative job or pursue further training in the skills of their choice. In the case of non-students above 14, it is generally recommended that they be given training in some suitable vocational crafts depending upon their past educational attainment. This, however, does not mean that the doors of general school education should be closed to them. In case they desire so, they should still be given all possible encouragement to continue their general education.

The attention in what follows is on school dropouts in the ages around 14, particularly from the urban areas. The considerations that prompted the choice are that the unemployed in that age group are highly prone to deliquency, unless cared for in time and in a proper manner. Also those who are employed for wages, it is generally reported, are subject to gross exploitation. On both the counts, it is imperative that there should be some facility to ensure proper guidance and placement of the school dropouts in the ages mentioned. The question is to what extent is this facility forthcoming from the existing vocational training and placement arrangements. This is to be examined first.

Foremost among the vocational training programmes are those at the industrial training institutes (ITIs). Though the minimum educational qualification prescribed for admission in the ITIs for most of the trades is standard VIII or IX pass, they are sought and secured by candidates with a far higher level of educational attainment. Non-matriculates usually find it difficult to get admission. This apart, the training in ITIs is highly institutionalised and adaptation of the curricula to the changing demand patterns is slow to come about. The training period is considerably long, extending from 9 months to 2 years. Though stipends and dress allowance, etc., are given to the trainees, the parents of the school dropouts find it financially difficult to maintain their wards for the full duration of the training. Thus, as things stand, much reliance cannot be placed on ITIs for help in respect of school dropouts.

So it appears is the case of training envisaged under the Apprentice Act, 1961. Though legally there is no bar on children of 14 years and above seeking training under the provisions of the Act, in practice the preference is for candidates in the higher age groups and with better qualifications. In fact the Act was amended in 1973 to include the training of engineering graduates under its purview. On account of the various administrative lapses, a number of small factories and trades at the semi-skilled level, which are best suited to

<sup>7</sup>Report of the Education Commission 1964-66, op.cit., p. 371.

<sup>&</sup>lt;sup>6</sup>Report of the National Commission on Labour, New Delhi, Government of India, Ministry of Labour, & Employment and Rehabilitation, 1969, pp. 384-85.

<sup>&</sup>lt;sup>8</sup>Annual Report of the Ministry of Labour, Government of India, New Delhi, 1976-77, Volume II, p. 1, 5.

school dropouts, are generally observed to be not included in the coverage. As in the case of ITIs, the candidates might be getting stipend during their training, but there is no guarantee of a regular placement in the establishments providing apprenticeship facility.

The programme of imparting vocational training within the frame of general school curricula is a major reform effort initiated in recent years towards attuning education to manpower requirements. But it appears doubtful whether the programme would be able to provide the necessary help to school dropouts. A major deterring factor is the long duration of the training envisaged (2-pears). The emphasis is also seen to be on retaining the pupils in the school stream rather than help them in immediate employment. In addition, since admissions to the vocational training are open to all, some of the courses for which the prospects are good are secured by students who have no family or other compulsions to seek immediate employment.

Besides, some vocational training programmes are run by organisations like Small-scale Industries Service Organisation; Central Social Welfare Board; Village and Cottage Industries Commission; Central Ministry of Agriculture, etc. As these programmes are generally oriented to persons already pursuing some trade or craft, in order to supplement their skills, much cannot be expected from them to meet the particular needs of school dropouts.

Turning to placement per se, the major facility is the employment exchange with its network spread over important places in the country. The exchange helps to effect placements of the job seekers registered with them, against the vacancies notified by employers as per the stipulations of the Compulsory Notification of Vacancies Act 1959, or otherwise. Provision exists for specialised services in respect of the physically handicapped, the scheduled castes and tribes, ex-servicemen, persons retrenched from public sector projects etc. <sup>11</sup>

<sup>9</sup>Reference here is primarily to the scheme of vocationalisation of education at the +2 stage under the 10+2 system launched in February 1977. As this scheme is still at the experimental stage (vide, Annual Report of the Ministry of Education and Social Welfare, Department of Education 1977-78, p. 9) it is not possible to make any detailed comments on it. It may be stated that this scheme is in pursuance of the recommendations made by the Education Commission 1964-66 (Report, op. cit., chapters II and V).

10 In this connection the comments made by the Education Commission on the functioning of the junior technical schools and technical high schools which also try to combine general education with technical training, are very relevant (vide, Report of the Education Commission 1966, op. cit., pp. 371-72).

<sup>11</sup>Government of India, Ministry of Labour and Employment, Annual Report 1978-79, Volume II, pp. 1-2. The total number of employment exchanges functioning in the country at the end of 1978 was 601. These included 66 University Employment Information & Guidance Bureaux; 15 Professional and Executive Employment Officers, 8 Colliery Exchanges, 11 Project Employment Exchanges, 16 Special Employment Exchanges for the Physically Handicapped and 1 Special Exchange for Plantation Labour. In addition, 190 (Provisional) Employment Information & Assistance Bureaux to cater to the needs of rural areas were also functioning in different community development blocks. Vide, Annual Report of the Ministry of Labour & Employment, Government of India (1978-79), Volume II, p. 8.

The school dropouts do not however find a place among these special categories. They have to queue up alongwith the general category. Apart from this, an examination of the present placement strategies of the exchanges suggests that the accent is increasingly on the educated, *i.e.*, graduates and other technically well qualified. One cannot have any dispute with this strategy, for, the nation has invested considerably in the educated and their employment could be expected to yield better returns to the national product than that of school dropouts. Certainly the placement requirements of the latter cannot take precedence over that of the former. At the same time since the school dropouts constitute a significant number, their interests cannot be ignored altogether for long.

With rapid industrialisation in the country, the demand for new hands is bound to arise at all levels of technical skill. In view of the large scale unemployment among the educated, it might appear as a good proposition to train and place them in jobs even at the semi-skilled level. The educated also on their part might show willingness to accept such jobs. But in all likelihood, they would be constantly attempting to shift to the white collar jobs, even if that meant lower remuneration, because of the social values in vogue. So in the long run the scheme might not prove to be an advantageous investment. On the other hand, school dropouts can be expected to fill in the bill very well at the semi-skilled levels. They may not only hold on to their jobs for a longer period, but be contented too.

The discussion in the foregoing paragraphs clearly indicates the need for launching a separate scheme for the training of school dropouts in the vocational skills and placement. The broad guidelines in that regard are:<sup>12</sup>

- 1. Training should be linked to immediate employment opportunities. In other words, it should be localised and should be for jobs that are expected to come up locally in the near future.
- 2. The programme should be in such areas where the skills could be acquired in a short time and for which the trainees need not be highly qualified.
- 3. The course content, the timing, and the intake of trainees in respect of each training course, etc., should be decided as the situation demands.
- 4. The overhead charges should be kept as low as possible. To this end, the possibilities of utilising the facilities in local institutions, general and vocational, should be fully explored before launching a training course. Thus, the programme visualised here is not traditional institution based, but largely ad hoc, each course adjusted to suit local demand.

<sup>&</sup>lt;sup>12</sup>These are drawn keeping in view the suggestions made by the Education Commission in respect of vocationalisation of education, vide, Report, op. cit., pp. 160 and 376.

5. In order to achieve the immediate objective of placement, there should be close liaison between the industry and the organisers of the training schemes both at the formulation and implementation stages.

#### PROGRAMME

The planning of a training course according to above specification involves five major steps. They are:

- 1. Determining the number of school dropouts in the area, their age, educational attainment, present occupation, aspirations, financial or other resources of the parents.
- 2. Identification of the local employment opportunities, the type of trades, the number of jobs and the trends thereof.
- 3. Enlistment of the cooperation of the employers both in running the training course and also towards the final placement of the trainees.
- 4. Securing the resources—finances, trainers, workshop and class-room facilities, etc.
- 5. Establishment of an organisation to coordinate the above four stages.

# Determining the Number of School Dropouts

There are broadly two approaches for finding out the particulars about the school dropout population in a particular area. One is field survey and the other is to depend on the secondary data. A major secondary source of data is the school enrolment records. By comparing the registers of all the schools located in the area over a period, it is possible to arrive at a rough estimate of the number of school dropouts, their educational attainment, family background, etc. But a serious limitation of this estimation is that it assumes that those who discontinued or failed to re-enroll in the higher level school are school dropouts. It is quite possible that the pupils concerned might have discontinued on account of their parents shifting to some other place and there they might be still continuing their education. In any case tracking down the school dropouts solely on the basis of school records is not an easy task. Further, the school records do not provide essential information on aspects like the present status of the school dropouts, their employment aspirations, etc. For collecting information in this respect, some field investigation may become necessary, though the school records could be a good starting point.

# Assessing the Employment Opportunities

Assessing the employment opportunities for the school dropouts involves two types of estimations, one in respect of employment for wages (salaries) and the other in respect of self-employment. In both the cases, the basic data could be obtained either through field investigations or from secondary

sources. As regards employment with factories and other establishments, the chief secondary source is the market information data periodically brought out by the Directorate General of Employment and Training. A major drawback is that except the establishments in the public sector and the major medium units in the private sector, a large number of small establishments are not under any obligation to intimate the vacancies with them.

The second major source is the census. The inter-census variations in the occupational structure in a particular area could be utilised for making demand projections about the employment opportunities in that area.

A third source is the five-year development plans. The development plans worked out in respect of a particular area could serve as the basis for estimating the employment potentials in that area. But, unfortunately, except in the case of metropolitan and other special regions, area planning, say, for the districts or smaller towns, is yet find its firm moorings in this country.

The licences issued for the location of certain big industries is another source which can be made use of for estimating employment, direct and indirect (in the anciliary units, in the services sector, etc.), that are likely to come up around that location. But if the past experience is any indication there would be generally a long time gap between the issue of a licence and the establishment of an industry and at times the industry may not come up at all.

Yet another important source which could provide the necessary lead for the estimation is the 'discussions with the knowledgeable persons' *i.e.*, officials, publicmen, academicians, etc., from the area.<sup>13</sup>

The estimations based on such secondary data could provide broad magnitudes of the demand for various categories of workers. But this may not be sufficient for working out all the details of a training course. Some information like the skills and the experience expected, wages payable, etc., might have to be collected through field investigation of the prospective employers themselves.

The major deterring factors in the case of field surveys are the high costs and the long time involved for completing the investigations. Therefore, it is generally suggested that in the determination of both the number of school dropouts and the employment opportunities for them, it is advisible to adopt a combination of field survey and compilations from secondary sources. Such an approach could be expected to bring down the costs and time considerably.

# Enlisting the Employers' Cooperation

A certain percentage of school dropouts trained in occupational skills could be expected to go in for self-employment, but as things stand at present,

<sup>&</sup>lt;sup>18</sup>Education and Manpower Coordination—A Survey Design (Mimeographed), Bombay, Government of Maharashtra, Finance Department, 1971, p. 11.

a large majority would be wanting to be employed for wages. It is desirable then to associate prospective employers all through, i.e., from the planning stage of the training programme. One way of ensuring employers' cooperation is by imposing certain statutory obligations as under the Apprentice Act 1961. But there is a danger of employers following such stipulation more in breach than in spirit. Further, since the primary objective of the training is to secure immediate employment, the statutory enforcement may not be of help. Employers have to be convinced of the advantages accruing to them in participating in the programme and in that regard a persuasive approach might be more effective. But in that process the interests of the school dropouts should not be sacrificed. An appropriate balance between the two approaches has to be struck and the ingenuity of the organisers counts a lot in this respect.

#### Finances

Since economic backwardness of the families is one of the major reasons for school dropouts, any training scheme intended for them should include some financial incentives to the trainees. This is particularly needed for those already employed (though for very low wages) to help them to come forward to partake in the programme. One suggestion is to provide stipends during the training as is done in the case of trainees of ITIs, etc. The second suggestion is for loans for undergoing the training, to be recovered in instalments after they have secured jobs. This requires either the employer or some other agency standing guarantee for repayment of the loan by the trainee. Such an undertaking is difficult to get. Another suggestion is provision of parttime employment during the training period by the employers participating in the programme. This enables the candidates to earn while learning new skills. The prospective employer and employee could also know in the process about each other well before the permanent absorption.

The finances for meeting the expenses on trainers' equipment, etc., could be secured under some of the employment promotion programmes provided for in the five year development plan like those for the educated unemployed, etc. As stated earlier, the employment of school dropouts is an important social service, deserving due consideration in the developmental activities.

Other resources like class room accommodation, training tools, etc., may at times prove more difficult than the finances. This is so because the training courses envisaged are essentially of short duration and of the nature of a crash programme. As stated earlier, the range of skills and the method of training of each training course may have to be decided according to the varying demands of the situation. Therefore, the number of trainers, the type of training equipment required, etc., may have to be decided and secured on an *ad hoc* basis. The cooperation of local technical educational institutions for running the courses is, therefore, highly desirable.

### Organisation

In the establishment of an organisation for managing the programme under discussion, two factors may be taken special note of. First is that the training courses envisaged have to be highly local in character, to match the occupational needs of the school dropouts with the emerging job opportunities in a particular area. The cooperation of the employers, educational institutions, etc., preferably on a voluntary basis, would be required to keep down the costs. The organisation could be set up within those State departments which control the industrial training institutes. But there is the danger of the usual rigidities of a state agency seriously curtailing the flexibility that would be locally required. The advantage therefore seems to lie in the constitution of local autonomous agencies with representatives from industry, voluntary service organisations etc. Such an agency could be located under the auspices of the municipal council in the case of areas with population of 1,00,000 and above, and in the case of rest of the areas in the zila parishad (district board)/panchayat samitis. Incidentally this proposition would be in line with the recommendation made by the Education Commission for decentralisation of educational (general as well as vocational) administration in the country.14

# **Integrated Education**

Central Government provides assistance to State Governments for placing handicapped children in ordinary schools since this appears to be the most practical way of enlarging educational opportunities for handicapped children and reducing their sense of separation. The following State Governments/Union Territories have agreed to operate the programme: Andhra Pradesh, Delhi, Haryana, Himachal Pradesh, Kerala, Maharashtra, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal.

--Annual Report, 1978-79, Ministry of Education and Social Welfare, Government of India.

<sup>&</sup>lt;sup>14</sup>Report of the Education Commission 1964-66, op. cit., p. 45

# Innovative Approaches in Management of Child Welfare Services—A Case Study

### Mina Swaminathan

A N OUTSTANDING characteristic of child welfare services in the country is the gap that is often found to exist between policies and schemes as conceived and their actual execution in the field. It would, therefore, be worthwhile to study in some depth the workings of an agency which has evolved a structure and procedures enabling objectives to be translated into action with a fair degree of success. A small voluntary agency with a scattered programme functioning in urban areas, Mobile Creches (Delhi and Bombay), provides such an example.

Before analysing the elements of its success, one must ask, what is mobile creches? Today an agency which runs a chain of day-care centres in Delhi and Bombay for the children of underprivileged working women, either living on construction sites or in resettlement colonies, mobile creches for working mothers' children developed from a simple response to the inhuman neglect of young children of migrant construction labour on large construction sites in Delhi.

#### THE PROBLEM OF THE MIGRANT CHILD

Unskilled labour from the rural areas of nearby States like Rajasthan, these workers move from site to site according to the availability of work. In such families, both men and women have of necessity to work in order to make both ends meet. Usually, the families live in temporary huts on the worksites themselves, without benefit of even the barest civic amenities such as water supply, sanitation, garbage disposal, etc., leave aside more elaborate facilities such as medical or educational services. The Contract Labour Act which makes provision for the hygiene, welfare and living and working condition of unskilled labour employed in such circumstances, is more often honoured in the breach than in the observance. Civic authorities do not concern themselves with the provision of services, as the huts are temporary settlements, and contractors provide the barest minimum acceptable to people who are used to rough conditions. Children under these circumstances grow up in a harsh environment exposed to the severest health hazards, besides

being neglected by parents, of necessity, and by the larger society. Since the migratory families are nuclear, and both parents are at work, the care of the babies is left to the slightly older children, who also perform other duties like fetching water, keeping watch over huts, cooking and carrying food to the parents, etc. Thus the older children are simultaneously deprived of the chance of an education, even if the migratory nature of the work allowed them to go to school. The sight of such children wandering among the rubble heaps of construction sites is common enough, but it was not till Mobile Creches was launched in 1969 that any serious response to the problem appeared.

Starting with a simple creche in a tent, intended to care for the infants alone, the organisation quickly found itself up against several problems. First, the poor health and sanitary conditions in the labour camps made the running of a creche a far from simple baby sitting enterprise, but involved a complex chain of activities including clinical and preventive health, nutrition and creation of basic standards of child care for children in such circumstances. Second, the older children had to be catered to, and this meant the evolution of a programme of nursery and primary education which would not only keep the children engaged, but be suited to the special needs and requirements of the situation. Third, the virtual absence of any category of workers, trained to deal with such a wide range or such a wide variety of skills and activities, led to the setting up and slow evolution of a programme of training and to the combination of training with management which is characteristic of the programme today. Lastly, the need to communicate with parents and to involve the adult community in the programme led to the development of a programme of adult education side by side. In addition, there were the usual teething problems of recognition, funding, accommodation, etc., besides the special ones of working with building contractors and coordinating with several government departments. Later on, the agency carried day-care programmes to resettlement colonies, catering to the needs of children of working mothers belonging to the lowest economic groups, engaged in such occupations as domestic service, scavenging, hawking and vending, waste collection, etc. With some modification, the same programme design is offered.

#### THE PROGRAMME AS IT IS TODAY

At any given time, there are about 30 centres in operation in Delhi and about 20 in Bombay. On construction sites, the centres are housed in very simple accommodation provided by the contractors, either a small two-room shed with a little open enclosed space in front of it and an elementary kitchencum-store or similar accommodation improvised in a semi-finished portion of the building under construction. In resettlements, low-cost structures using local materials have been put up to house the centres. Children in the age-group 0-14 are to be found in the centres. For convenience, they are

divided into groups: creche (0-3)-balwadi (3-6) and 6+ in informal primary education. In practice, however, the grouping is not rigid, and there is considerable freedom of movement. This enables older children to comfort and take care of younger ones keeping the infants on their laps or beside them when they study or play, while the babies return to their own age group as they develop self confidence. The daily creche routines emphasise cleanliness, habit formation, nutrition and affectionate interaction with adults. One of a panel of doctors visits each centre once a week for treatment of cases, and advice on preventive health, and follow-up is done by the staff. On construction sites, mothers come in once or twice a day to breast-feed infants. Advice to mothers on health, nutrition, family planning and child care is usually given informally during such meetings during the day or when the staff goes on their daily morning rounds. The daily programme for the 3-6 consists of a wide variety of structured and unstructured play, using simple low-cost and easily available and replaceable materials and equipment. Educational games, arts and crafts, experiences with natural materials, songs and dances form the core of this programme which gradually perpares the child, through participation in a structured programme, for the more formal business of learning the three 'rs.' The 6+ get more formal lessons in language, mathematics and social studies, and are helped to acquire the basic skills of literacy and numeracy. but still using informal methods, stressing play, games, and handwork. Older children, who have been helped to local municipal schools, usually come back for at least a few hours every day for personal tutorial help, and participation in other activities like arts, music, games and sports, etc. The usual daily routine is as follows: early morning cleaning and setting up of the centre with the help of all staff members, daily visits to all the homes to collect the children and meet the parents, cleaning of the children, milk, games and prayers. Between 10 a.m. and midday, organised play and educational activities for each age-group according to age-level; at twelve noon, a supplementary mid-day meal of porridge with vegetables followed by group clean-up. The afternoons are spent in a variety of informal activities with emphasis on arts, music, gardening, story-telling and reading followed by games and sports, outdoors when weather permits. Late in the evening, after 7 p.m., literacy classes are held for men and women separately, for two hours, five nights a week, mostly staffed by the same people who work with the children during the day.

Occasional programmes include parents' meetings; special demonstrations and discussions for women; performances by an educational drama troupe set up by the agency; celebration of community festivals, etc. By and large, the same staff is required to perform all tasks.

# The Programme and Management Implications

1. Comprehensiveness—All age groups from birth onwards are included in some way and at some time or the other. This makes the task heavy and

difficult, but varied; however, continuity of attention and reinforcement to the child is possible, especially in resettlement areas where the population is stable. On work sites, where there is heavy turnover of labour, individual follow-up is difficult.

Implication: flexibility and variety in programme to meet all needs, adaptability, quickness of response in staff and personal concern and interest in individuals and their growth.

2. Integration—The programme includes within its range health care work, education, play, recreation, arts and crafts, adult literacy/extension and communication with adults.

*Implication:* multipurpose staff with the skills and abilities to deal in the course of the day with all these varying aspects, and to create a home like informal atmosphere.

3. Relevance—The programme is closely geared to the needs and conditions of the community it serves.

*Implication:* familiarity with and understanding of the problems through constant study and appropriate means to communicate knowledge effectively.

4. Flexibility—The programme has evolved in a variety of ways and is flexible in several senses; it is simple enough physically to operate with limited equipment and to be able to move at short notice, hence the name; local problems have to be solved locally and decisions taken on the spot according to circumstances.

*Implication:* resourcefulness and initiative on the part of the staff is necessary as well as a decentralised administration which makes it possible for initiative to be exercised at all levels.

#### EVOLUTION OF THE STRUCTURE

It is worth repeating that the present structure, procedures and organisation of recruitment, training and management have evolved over a period of years through a process of trial and error, and largely guided by non-professionals with no preconceived notions of management. The constraints and limitations of the situation have also played a part in the evolution.

The basic structure of the organisation can be seen at three levels: (a) field, (b) supervisory, and (c) managerial. Each will be considered under the following heads: (i) functions and required job characteristics, (ii) recruitment, (iii) training, and (iv) development.

# Field Staff

Functions: The worker in a centre functions as a multipurpose worker. This implies that an individual has to be able to do several tasks, be adaptable, quick, flexible, but may, as a result, never become highly skilled in any one particular activity. Even more important is the ability and willingness to participate in an atmosphere of sharing and equality. Within centres there is

no hierarchy. Though each centre is managed by an in charge, specific tasks like cleaning or teaching are not associated with individuals, but all must be willing to join in all work. The willingness to engage in the heavy manual work, often dirty, involved in child care is an important attribute in a culture in which such activities are stigmatised.

Recruitment: Workers are selected for aptitude and then involved in a process of continuous in-service training. The minimum qualification is high school though women with no or lower educational qualifications are also accepted for work in the creches if they are otherwise suitable. The recruitment is essentially through a process of self-screening—aspirants are sent out to work in centres under the guidance of experienced field staff. Those who feel uncomfortable either with the nature of the work or the working atmosphere with its absence of hierarchy or class divisions of tasks, drop out within the first few weeks or days.

Training: Training, which is essentially practical and field-oriented, may be conceptualised in four stages. The first stage is that of exposure to the on-going work, with limited participation. This coincides with a period of screening and may be a few weeks in duration. The second stage is the field training under the guidance of experienced and senior staff. It basically consists in acquisition of basic skills, procedures and routines through a process of drilling and repetition, and imitation of role models. The third stage is that of rationalisation, where a theoretical element enters. Through a series of discussions and workshop sessions, the worker explores and learns the basis of the various routines, the need and relevance of various skills, and the underlying objectives and meaning of the programme. The process is inductive and participatory, in which the trainee starts with the immediate and concrete daily experience, analyses it and arrives hopefully at the underlying principles. These workshop sessions are conducted by the supervisory staff, with some assistance from resource personnel, using a variety of participatory methods, involving games, visual aids, role play, etc. This stage of the training lasts for a year or more, during which time new skills are also constantly taught. The fourth stage is that of problem solving, an on-going process in which people at all levels are continually involved. Workers with more than two years work experience gradually get involved, are promoted to training and supervisory work, participate more in problem solving discussions.

Development: Some turnover is inevitable in any institution with largely female staff and this is compounded by the low salaries. Yet stability of staff has been achieved to a considerable extent by: (a) the availability of job security and some benefits such as medical care, provident fund and gratuity, interest free loans, etc., (b) fixed grades with regular increments, and (c) the possibility of rapid promotion through several grades. Initial salaries are deliberately kept very low to allow for the rapid turnover in the first few months of service, during which time the worker anyway is still under

training and brings in less than is put into him/her. All promotion is the outcome of fairly elaborate annual exercise in evaluation in which each worker is assessed by two others at a higher level, and then reviewed by a group at the supervisory/managerial level. For the individual, this links performance with promotion. While rises are never automatic, there is the possibility of rapid movement in responsibility, position, function as well as in salary. Several dramatic instances exist within the institution to act as constant reminders of this possibility.

#### Supervisors

Functions: Known as trainer/supervisors, they perform the double role of training and guidance as well as field supervision. They play a key part in maintaining internal communication and participate in policy making. The functions of a supervisor include the following: contact with local community and study of its problems, organising facilities at local level, all activities and programmes with children, field guidance of new staff, recruitment, discipline and management and training of staff, preventive health work in the community, maintenance of records, accounts, preparation of reports, negotiations with contractors on work sites, and involvement in policy issues through discussion at regular meetings.

Recruitment: The supervisory cadre consists of people with varying educational qualifications (high school to MA) and specialised training (B.Eds. MSW, and dietetics, etc.) but having in common long exposure in the field and practical experience of handling problems. There is no lateral entry by direct recruitment to this cadre, a few experiments in that direction have proved disastrous in the inability to engender appropriate skills or confidence on the part of the field staff. This practical training enables them to act as examples to the field staff.

Training and Development: Training and development proceeds through apprenticeship to more experienced person. Time is allotted for participation in the formal training programme of field staff. Resource people and persons at the managerial level in turn guide and direct, conduct refresher courses on specialised areas, while self-study helps to upgrade knowledge and skills in various disciplines. The forum for decision-making problems-solving and exchange of experiences, which is itself an educational and staff development activity, is the fortnightly supervisory meeting. This meeting is also an exercise in collective decision-making and training methodology.

# Management

The management consists of a governing body of ten people drawn from a somewhat larger group which forms the society. The constitution of the registered society lays down that office-bearers and members of the governing body have to be drawn only from among those who are 'actively' associated with the day-to-day work. As a result, the chairman, secretary, and several

other members of the group (five at present) also carry executive responsibility for field supervision and direction of the day-to-day programme. In their capacity as executive officers, they are paid workers, also on regular though modest grades with service benefits, etc.

Function: Multi-purpose functioning is expected even at this level, as in addition to responsibility for assigned functions, members are also expected to carry the load of the various honorary offices by rotation and to lend a hand at chores when needed.

Recruitment: Both professionals and non-professionals have been inducted into the group. The primary qualification, besides the one already mentioned of willingness to be actively involved in an executive capacity, is the sharing of a common work-style and approach. No special consideration is given to academic or professional qualifications, but as with the supervisory cadre, position and salary are related, not to academic qualifications, but to the level of responsibility effectively carried.

Training and development result from induction of new members, regular interaction within the group, observation and study, programme monitoring and participation in the in-service training.

#### PROCEDURES FOR ADMINISTRATION AND COMMUNICATION

The key personnel for administration and communication within this three-level system are the supervisor/trainers. Each supervisor has responsibility for two centres. This permits them to spend at least two full days a week in each, even allowing for the demands made by their other functions of training, record-keeping, etc. Besides, for administrative convenience, centres have been grouped into zones of four or five centres, under the overall care of a senior person, known as a zonal supervisor. This permits for interaction and consultation between two persons at least in dealing with problems, at the immediate field level.

There is exchange of views, adjustment, sharing, guidance of the newer or less experienced supervisor by a more experienced one; above all early introduction to the principle of joint decision-making as well as of accountability at the primary level.

The basic mechanism of operation is the fortnightly meeting (backed up by a monthly smaller meeting of zonal supervisors). The functions of the meeting are: (a) opportunity to consult and seek guidance on the solution of specific problems, (b) coordination and programme planning, (c) communication, (d) collation and maintenance of records, (e) checks on disbursement of supplies, salaries and matters connected with expenditure in cash or kind, (f) discussion of basic issues pertaining to policy, and (g) administrative problems relating to staff.

In addition, small groups meet to prepare for training sessions and special educational meetings are held for refreshing knowledge or technique. The

smaller group of zonal supervisors meets once a month to thrash out issues in greater detail, and also to deal with problems of staffing and management more fully. Mutual consultation in such matters over a period of time has led to an agreed system of joint decision-making. It is customary now to classify all problems into two groups; those which can and should be dealt with immediately at the local level, where there is a premium on speed and initiative; and those which need to be referred back to the group for discussion. The first type of problems may also be raised for further discussion, or even brought up merely as illustration, at any subsequent time.

# Other Channels of Communication

Parallel with these meetings, other groups of workers also meet at regular intervals. Incharges of centres meet twice a month—once for a training session on some specific topic or problem, once a month for general review of programme individual problems, settlement of monthly accounts, planning of programmes and other routine/administrative matters.

All workers are grouped and attend at least one group meeting or training session each month. These would be concerned with demonstration and training for activities related to some special topic; the groups are usually divided as creche, balwadi, non-formal, etc. In addition, there are specialised groups helping to develop individual skills, or for the creation of specialist cadres such as arts and crafts, music, dance and drama, community health workers, etc. These specialised cadres are intended to strengthen special talents and provide special knowledge. The specialised workers are however drawn from the core programme, and continue to retain their ability and willingness to turn their hand to whatever is required in any situation. Any individual worker must attend at least one group session every month, and may, in fact, attend two. This continuous contact, besides administrative convenience and ongoing development of staff, also acts as an immediate channel of communication.

This is the horizontal channel of communication in which workers meet across centres in larger groups, for the purpose of training sessions, during which they come into contact with supervisors other than their own immediate one, resource persons, and administrators.

Vertically, workers are grouped in centres, each under an incharge guided by a supervisor, and under the overall care of a zonal supervisor. This is their vertical channel of communication.

Once or twice a year, the entire staff at all three levels joins in a social gathering. The basic purpose of this is to create a sense of solidarity and oneness with fellow workers and this is achieved mostly by informal interaction at a picnic or excursion. However, on some occasions, some planned educational components are also introduced.

Managerial Strategies and their Outcomes

From this brief description of how the system operates, one may derive the following underlying principles which have been applied:

Equal pay for equal work: Payment (both in terms of prestige and in terms of money) is related to responsibility and competence. Once the same level is achieved, the reward is the same, regardless of earlier experience or educacational qualification. These play a part only, enabling the better qualified to get a higher start at the entry point, but allows the competent, hard-working and responsible worker to catch up. This principle applies at all levels.

Team work: The stress is on collective action and responsibility and the success of the team; an individual worker, even with specialised skills, is multipurpose, and hence can in emergencies always be replaced. This makes for mutual respect and tolerance and strengthens ability to work cooperatively.

Collective decision making: This applies at all levels and allows for the participation of all in the decision-making processes through the various group meetings. The same system applies at the managerial level.

Democratic functioning: Lack of hierarchy in tasks, an informal atmosphere in centres, participatory methods in training, consultation in framing programme.

Respect for demonstrated and demonstrable ability as the foundation of authority: No tasks are demanded at any level which are not performed capably, and shown to be so performed constantly, by those in authority. Respect for work is also shown in the high value placed on manual work and on physical participation in all tasks, the lack of class/caste system in this regard, so different from the usual ayah/sweeper/peon/clerk type of hierarchy. Practical achievement in the field is applied as the criterion of success.

Decentralised decision-making and solving of local problems at local level: With high rewards for improvisation, initiative, flexibility, responsiveness and innovativeness. The examples of these are regularly collected, quoted and made the basis for further training by discussion.

Two-way communication—both vertical and horizontal: Permitting feed-back as well as a chain of command.

#### Outcomes

The structure and functioning of this system has enabled mobile creches to come up with solutions to some problems usually met with among child welfare personnel in large schemes of work. Briefly, these may be summarised under the expression 'job commitment'. In spite of low pay, long hours of work, constant supervision, demanding schedules, and tough working conditions most of the people at work look fairly happy and involved and, what is more important, the staff turnover is, under the circumstances, very low after the initial screening period. What are the rewards, then, of such a job, which makes people stay on? First, there is a pleasant, homely and informal

working atmosphere in which laughing, singing and playing enter as naturally as performing chores and the youthfulness of the workers is allowed free scope, so different from the rigidly stratified and restricted social background from which the majority of lower middle class workers come. Second, the screening process retains only those with some interest. Third, the opportunity to identify with the institution comes through the various forms of participation. Fourth, rapid promotion opportunities prevent stagnation and frustration at work, and legitimate channels exist for airing personal problems and grievances. Fifth, opportunities to take responsibility, show leadership, take decisions, act speedily, arise daily. They not only allow the more able to show their qualities but lead to a growth in concern, interest and involvement for all. Sixth, the tremendous variety of activities encompassed within a single day precludes boredom of any kind and possibly even compensates for fatigue and sheer physical exhaustion.

Lastly, some may also get satisfaction out of the fact that they are learning while they are earning, in two senses. Not only are individual skills and talents discovered, used and nurtured further, but many also go through the conventional process of educating themselves and obtaining degrees while they are at work. All these elements, which are the planned outcomes of certain managerial strategies, create the sense of commitment and concern which separates the job 'merely done' from the job 'well done' and which is at the root of quality in programme. It is this which enables the programme objectives of comprehensiveness, integration, relevance, continuity and flexibility to be fulfilled effectively. The wheel comes full circle, relating management practices, workers' satisfaction and programme objectives.

#### CONCLUSION

Can 'dedication' and 'innovativeness' be replicated?

It is a common place among bureaucrats, especially when on the defensive, to ascribe the success of voluntary agencies to a mysterious quality known as 'dedication' or to the charismatic personality of a particular 'social worker', implying that these personal qualities, which are acts of God and cannot be duplicated by man, are alone responsible for success and there is no need to try to achieve. The above analysis should at least explode this myth. Dedication far from falling like manna from the heavens, in unexpected places, is something which can be encouraged and cultivated by the application of sound principles of organisational behaviour. It is time child welfare administrators ceased to take refuge behind such lazy and hypocritical banalities and, instead, took a good hard look at various productive and counter-productive management systems. To do otherwise is to beg the issue.

Another favourite debating point is whether so-called 'innovativeness' can be institutionalised, or, to put it differently, whether people can be trained to be 'creative'. Here too the above analysis would indicate the possibility to

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be real by creating means which permit, encourage, and reward such qualities whenever they appear.

The answer to both these questions, then, is 'yes, if you set about it in the right way'. ! If a systems approach has any relevance at all to welfare/administration, then it should be able with the help of such case studies, to tell us what steps are implied in the expression 'the right way'.

#### The Children Act, 1960

The Children Act, 1960, provides for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union Territories. Experience gained in the implementation of the Act has brought to light certain inadequacies and weaknesses in it. The Act has been amended suitably by an enactment which has been passed by both Houses of Parliament. The President's assent has also been received. Some of the major amendments are: (i) It has been provided that children's courts constituted under the Act should be assisted by two qualified social workers, at least one of whom should be a woman, (ii) Under the Act, child welfare boards are expected to deal with neglected children, while delinquent children are referred to the children's courts. Very often, it is found that reported cases of delinquency are in fact cases of negligence. The converse may also, on occasions, be true. Provision has been made enabling mutual transfer of cases between a child welfare board and a children's court. (iii) The functions of the children's homes and special schools are sought to be widened with a view to ensuring the development of the personality of the child. (iv) The administrator of a Union Territory has been empowered to provide for a comprehensive programme of after-care for completing the process of care and treatment of children under the Act. (y) The ban imposed on the appearance of legal practitioners before the children's courts has been removed.

—Annual Report, 1978-79, Ministry of Education and Social Welfare, Government of India

# Integrated Child Development Services Scheme

# S. Kapoor

CHILDREN ARE the most important asset of a country because they will be tomorrow's young men and provide the human potential required for a country's development. It is, therefore, imperative that today's child should be healthy both physically and mentally so that tomorrow he turns into an energetic and dynamic young man with alert mind and is able to contribute the maximum to the national development. Thus efforts to improve the well-being of children is not only a humanitarian concern but a solid step towards the future economic and social development of the country.

The Government of India has also recognised children as a 'supremely important asset' and that is why the needs of children and our duty towards them are enshrined in our Constitution. Article 39 of the Constitution has laid down in a nutshell our duties and responsibilities towards our children. According to it the tender age of children should not be abused and childhood and youth should be protected against moral and material abandonment.

#### NATIONAL POLICY

Realising children as an important asset, the Government of India adopted a national policy for children in 1974. This resolution said:

It shall be the policy of the state to provide adequate services to children both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The state shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth.

The national policy enlists about fifteen measures which should be taken up to fulfil its objectives.

The early years in a child's life are of crucial importance to him. A major part of the child's mental development and the formation of his bones, etc., takes place in the first six years of his life. It is, therefore, necessary that proper care is taken at least during the first six years of their life so that they are helped to be healthy children and then healthy men.

India ranks second in population in the world today. According to the 1971 census, the total Indian population was 547 million of which 42 per cent, *i.e.*, about 228 million, were children in the age group 0-14 years. Out of these 228 million, 188 million lived in rural areas. There were about 115 million children in the age group 0-6 years, constituting about 1/5th of the total population.

Maternal and infant mortality rates are very high. In 1971 the infant mortality rate was around 122 per thousand. This rate is the highest among children less than one year of age.

Morbidity rate among children is also very high. It is estimated that 75 per cent of the child population can be classified as not healthy due to illness. This high rate is largely attributed to unfavourable and insanitary environmental conditions, particularly in villages and urban slums. Many infections among children like diarrhoea, dysentry, cholera, typhoid and hepatitis are caused by infected food also.

There is plenty of evidence to show that malnutrition is widely prevalent among Indian children. India's level of protein intake appears to be among the world's lowest. Actually young children, pregnant women and nursing mothers need more calories and protein. Malnutrition and disease have a synergy relationship. According to a survey conducted by the National Institute of Nutrition, Hyderabad, nearly a million Indian children die every year mainly due to malnutrition and far more die due to infectious diseases which would not have developed but for the children's poor diet.

The picture above will show that for a proper development of the child it is necessary that care is taken from all angles; there can be no programme that will not suffer from some conceptual or operational limitations if undertaken in isolation.

In the first four plans in India a few child welfare programmes were started but they generally covered just one or the other aspects of child welfare, with the result that their impact was not felt as much as it should have been. No coordinated strategy for child development programme was evolved till the Fifth Plan when the scheme of 'integrated child development services' was worked out.

#### THE ICDS SCHEME

Integrated child development services (ICDS) scheme involves the delivery of a package of services to children in the age group 0-6 years. The concept of providing such a package is primarily based on the fact that the combined effect of a few essential services will be more than if these services are delivered in isolation.

The objectives of the ICDS scheme are:

(i) To improve the nutritional and health status of children in the

age group 0-6 years.

- (ii) To lay the foundations for proper psychological, physical and social development of the child.
- (iii) To reduce the incidence of mortality, morbidity, malnutrition and school dropout.
- (jv) To achieve effectively coordination of policy and implementation amongst the various departments to promote child development.
- (v) To enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

The following is the package of services which is being provided under the scheme:

- (i) Supplementary nutrition
- (ii) Immunisation
- (iii) Health check-up
- (iv) Referral services
- (v) Non-formal pre-school education
- (vi) Health and nutrition education

Availability of safe drinking water is essential for the proper development of the child and, therefore, efforts have been made for the convergence of the rural drinking water supply programme in the ICDS project areas.

#### TYPE OF BENEFICIARIES

As mentioned earlier also, children in the age group 0-6 years have been included as beneficiaries under the scheme. Since, for a child to be healthy, it is necessary that his mother during her pregnancy should also be healthy, pregnant women are also covered by the scheme. Nursing mothers, during the period when the child is 0-6 months old, also come under the purview of the scheme. Since the mothers plays a key role in the physical, psychological and social development of the child, women in the age group 15-44 years have also been covered under the scheme and will be given health and nutrition education. The delivery of services to the beneficiaries will be as follows:

# Beneficiaries

1. Children less than 3 years

#### Services

- (i) Supplementary nutrition
- (ii) Immunisation
- (iii) Health check-up
- (iv) Referral services

- 2. Children in the age group 3-6 years
- (i) Supplementary nutrition
- (ii) Immunisation
- (iii) Health check-up
- (iv) Referral services
- (v) Non-formal pre-school education
- 3. Pregnant and nursing mothers
- (i) Supplementary nutrition
- (ii) Immunisation of pregnant women against tetanus
- (iii) Health check-up
- (iv) Referral services
- (v) Health and nutrition education
- 4. Other women (15-44 years)
- (vi) Health and nutrition education

As mentioned earlier also the ICDS scheme started in 1975. Since it was a new concept and a new scheme of its type, it was started in 33 experimental projects. It has now, however, been expanded to 150 projects with another 50 in the offing.

Since the poor economic status of children has a direct correlation with their general health and nutritional status, it was decided to start the ICDS projects in areas predominantly inhabited by poor people. In the selection of projects in rural/tribal areas, priority consideration is given to the following factors:

- 1. Areas predominantly inhabited by tribes, particularly backward tribes;
- Backward areas;
- 3. Drought-prone areas;
- 4. Areas inhabited predominantly by scheduled castes;
- 5. Nutritionally deficient areas; and
- 6. Areas poor in development of social services.

In the selection of wards in urban areas, for urban projects, the priority consideration is given to:

- (a) location of slums; and
- (b) areas predominantly inhabited by scheduled castes.

The administrative unit for the location of ICDS projects is either the community development blocks in rural areas or the tribal development blocks in the predominantly tribal areas, or the wards or slums in urban areas. It is estimated that the total population of a rural project will be around 100,000 of which children in the age group 0-6 will be 17 per cent, *i.e.*, 17,000; the number of women in the age group 15-44 years will be around 20,000 and out of this the number of pregnant and nursing women will be around 7,000. This is a general pattern and varies from block to block.

#### Personnel and Functional Structure

Under the ICDS scheme, the focal point for the delivery of services is an anganwadi. Almost each village (a population of about 1,000) will have one anganwadi centre. This may, however, vary if the population is much different from 1,000. For actual delivery of services, an anganwadi worker (AW) will be in-charge of each anganwadi centre. The anganwadi worker will be responsible for the delivery of services to children and women at the anganwadi centre.

The anganwadi worker is an honorary worker (preferably a lady) getting an honorarium of Rs. 125 p.m. if she is not matriculate and Rs. 175 p.m. if she is matriculate. As far as possible a matriculate anganwadi worker should be employed. But the primary consideration is that the anganwadi worker should be from the same village in which she has to work. She is assisted by a helper in her daily work. The helper is also honorary and is paid an honorarium of Rs. 50 p.m.

At the block level of child development project officer (CDPO) is in charge of the whole project. The CDPO is the supervisory and controlling officer. She/he is also the main coordinating officer as far as coordination with other departments or agencies at the block level is concerned. The scheme lays down that preferably the CDPO should be a lady and should be a graduate in either home science, nutrition, child development, social work or in an allied field. The CDPO should be of the same rank as the block development officer.

The CDPO will generally supervise the work of 100 anganwadi workers in all its entirety and this is quite a heavy task. Therefore, to assist the CDPO in supervision, some supervisors (mukhyasevikas) have been provided. Generally there is one supervisor to look after the work of 20 anganwadi workers.

Apart from the above field staff, the CDPO has been provided some administrative staff for his/her own office.

For efficient delivery of health services under the scheme the health staff at the primary health centre (PHC) has been strengthened from ICDS funds. This additional health staff is:

- -One doctor, preferably with diploma in child health
- -Two lady health visitors/public health nurses
- -Four to eight auxilliary nursing midwives scheme (ANMS).

Additional input of this staff at the PHC forms an integral part of the overall PHC structure. The implementation of the health component of the scheme will be the responsibility of the health staff although the CDPO will look after the project as a whole, seeing that the health services are also provided efficiently.

# Delivery of Services

As discussed earlier, the anganwadi centre is the focus of delivery of all services to children and women. The anganwadi worker is the grassroot worker who would herself deliver or take the help of the health staff in the delivery of the various services at the centre. Her duty will be to collect the children and women who are the beneficiaries, at the anganwadi centre, for actual delivery of services to them. The helper helps her in this.

Initially, when the anganwadi worker is put on the job, she carried out a survey of her own area to find out the total number of children (0-6 years) and women (15-44 years) and the total number of pregnant and nursing mothers in the area. In this way she is able to know the exact number of beneficiaries in her area who are to be provided with the various services under the scheme. It is only after this that the actual delivery of services is taken in hand. A brief outline of each of these services is given below.

# Supplementary Nutrition

Supplementary nutrition is given to children in the age group 0-6 years and to pregnant and nursing mothers from the low income families. However, only the malnourished children in the age group 0-5 years are to be provided supplementary nutrition. For finding out the malnourished children, a weight curve graph is made use of. The weight of the child according to his age is plotted on this graph and it is found out as to whether the child is malnourished or not and also in which category of malnourishment the child falls. All children who fall in the II degree of malnourishment or below are to be provided with supplementary nutrition. Children in the III and IV degree of malnutrition are severely malnourished and are given therapeutic nutrition and even children of IV degree malnutrition require hospitalisation.

All the pregnant and nursing mothers from the families of agricultural labourers, marginal farmers and other poor sections of the community are to be enlisted for supplementary nutrition.

As far as the type of food is concerned, first priority is to be given to locally available food and the recipes prepared out of it should be to the liking of the local community.

Supplementary nutrition is given on all days except Sundays and holidays, *i.e.*, about 300 days in an year. The average cost of food has been estimated at 25 paise per beneficiary per day. However, in the case of severely malnourished children, it is to be provided at the rate of 60 paise per child per day. The supplementary nutrition given in this account should be such as to contain about 300 calories and 10-12 gms. of protein on an average.

#### Nutrition and Health Education

Nutrition and health education is to be given to all women in the age group 15-44 years. Priority is, however, to be given to pregnant and nursing mothers and to women in the younger group, i.e., 15-35 years. The following means are

to be adopted for carrying the message of health and nutrition education:

- (i) Use of mass media and other forms of publicity;
- (ii) Special campaigns at suitable intervals;
- (iii) Home visits by anganwadi workers and ANMS;
- (iv) Specially organised short courses in the village;
- (v) Demonstration of cooking and feeding;
- (vi) Teaching in functional literacy classes under the scheme of functional literacy being implemented by the department of social welfare alongwith the ICDS scheme; and
- (vii) Utilisation of health and nutrition education programmes of the Ministry of Health, Agriculture and Irrigation, etc.

#### **Immunisation**

Immunisation is the best method of preventing diseases amongst the pre-school children. Under the ICDS, all children in the age group 0-6 are to be given complete immunisation, including booster doses, against smallpox, T.B., diphtheria, whooping cough, tetanus and typhoid. Immunisation against polio-myelite is to be given to children in those areas which are polio prone. Immunisation against tetanus is to be given to all pregnant women.

Immunisation will be given by the health staff, i.e., ANM, LHV or the doctor or by special teams of the health department at the anganwadi centre. The anganwadi worker will help the health staff in this by getting the children and women at the anganwadi centre. A complete record of immunisation of all children and pregnant women will be maintained in the prescribe cards kept at anganwadi centre.

# Health Check-up and Referral Services

Children and expectant mothers will be regularly checked up by the health staff. The health check up will include:

- (a) anti-natal care of expectant mothers;
- (b) post-natal care of nursing mothers and care of new born babies; and
- (c) care of children under six years of age;

Any child or woman who needs special care or treatment or hospitalisation will be referred to higher doctors or specialists or to a hospital, as the case may be.

A health card is maintained for each child recording the findings of the health functionaries after the health check up is done. In the case of pregnant women an anti-natal card is maintained for recording the findings.

# Non-formal Education

Children in the age group 3-6 are given non-formal pre-school education

at the anganwadi centres. The children are not given any formal learning but proper attitudes and values and behaviour patterns, etc., are developed in them through play-way methods. The creative power and thinking of the child is allowed to be developed.

# Monitoring and Evaluation

For the efficient implementation of any new scheme it is necessary that it is continuously monitored. This aspect has been specially taken care of in the ICDS scheme. Detailed monthly progress reports are sent by every project officer to the social welfare department at the Centre regarding the progress made in each project. These reports are examined thoroughly in the Union department of social welfare and deficiencies or bottlenecks, if any, are pointed out regularly to the respective State/U.T. with suitable suggestions. These corrective measures have proved very useful.

For the monitoring of health and nutrition aspects of the schemes, each project has been attached to a nearby medical college or medical institution. These institutions carry out two monthly surveys of the project and submit their report alongwith their recommendations to the State/U.T. Follow-up action on this is taken by the State/U.T. Governments, but closely watched by these medical institutions. These institutions also carry out base line surveys and six monthly report surveys to know the progress made by the scheme. All these medical institutions are working under the overall supervision of the All India Institute of Medical Sciences, New Delhi.

Evaluation of the scheme has been taken in hand by the Planning Commission.

# Budget

ICDS is a Centrally sponsored scheme being implemented by the department of social welfare. The total expenditure on the scheme is being met by the Central Government except for expenditure on the nutrition component which is to be met by the State/U.T. Governments from their own funds.

UNICEF has come in a big way to assist the ICDS scheme. They are supplying jeeps, refrigerators, weighing scales, paper for health and nutrition cards, typewriters, mopeds, etc., and by meeting the cost of training the various functionaries.

# Training

A great emphasis has been placed on training of the various functionaries under the scheme. Detailed syllabii have been prepared by expert committees for training the functionaries.

Anganwadi workers are given four months' training at either gram sevika training centres of the State Governments or at the bal sevika training institutes run by Indian Council for Child Welfare, or other institutions run by voluntary organisations.

Training courses for supervisors (mukhyasevikas) are of three months duration. Generally they are being trained at family and child welfare training centres or at Lucknow.

Training courses for child development project officers are of two months duration. These have been so far arranged at the family and child welfare training centre, Jamia Millia Islamia, New Delhi (now a part of National Institute of Public Cooperation and Child Development, New Delhi) and at the National Institute of Public Cooperation and Child Development, New Delhi.

Orientation courses in ICDS for the various health functionaries are being organised by the respective medical institutions attached to the ICDS projects under the overall supervision of All India Institute of Medical Sciences, New Delhi.

Apart from the training/orientation courses, every year a number of workshops of various levels of ICDS functionaries are organised at various centres in India. These are generally organised by the Union department of social welfare in collaboration with National Institute of Public Cooperation and Child Development, New Delhi. These workshops are the forums for reviewing the progress made by the various ICDS projects, the difficulties faced by them, and by discussing them, for finding solutions. These have been found to be very useful in taking the programme ahead at a greater pace.

#### Coordination

ICDS is an intersectoral programme and, therefore, proper coordination among the various departments involved in the implementation of the scheme at each level is necessary. For this purpose, coordination committees have been formed at various levels, viz., village, block, district, State and at the Centre. At the Centre this work is being performed by the National Children's Board.

Various workshops organised from time to time, about which a mention has been made earlier, also help indirectly in achieving the coordination as the officials of the various departments participatory in them.

The progress of the ICDS scheme so far has been very encouraging. The scheme has also been welcomed by rural/tribal masses and its impact on the health and nutrition status of children and women has been found to be significant. It can be said that the ICDS scheme has a bright future and holds many good things for the children and women who come from the poor and backward sections of our society.

# The Tripura Balwadi Programme: An Integrated Approach to Child Welfare and Community Education

# Roma Standefer Murty

THE MOST important welfare programme organised by the Tripura Government for the children of the State is its balwadi programme. The first balwadis opened in the late fifties. Although the early balwadis were little more than nursery schools for pre-school children, after the child demonstration project in 1962, the balwadi became an important institution for communitywide education when its programmes were broadened to cover health, nutrition, child care and adult literacy. From this point on, the programme was carefully planned to promote not only child welfare but community education as well. It grew slowly but steadily through the next ten years under the guidance of a small group of well-trained and dedicated officials, many of whom had previously been involved in the community development programme.

The main period of growth was between 1962 and 1972 when an average of 30-40 balwadis were opened a year. Although a number of these were in urban centres or large towns, the majority were placed in small villages. Many were opened in backward and tribal areas where those who were among the most deprived would have access to the services they provided.

The basic balwadi institution was usually a bamboo or mud building with thatch roof constructed by the villagers themselves to specifications established by the education department. It would be run by a social education worker (SEW) or gram sevika, and would offer pre-school classes for children in the age group 3-6 in the morning and classes in functional literacy for adults in the afternoons. As the gram sevika was a 'multipurpose village level worker' she was also expected to give classes in nutrition and child care to the mothers and to organise *Mahila samitis* for the village women. Even at its most elementary level the balwadi was an institution for community education as well as the education of pre-school children, even though the former programmes may or may not have been well-developed depending on the abilities and energy of the SEW.

In the period 1962-1972 a number of balwadis were developed into what

were termed 'full-fledged' balwadis by social education officials. These were model balwadis offering enhanced programmes and services. These would include, in addition to the basic balwadi programme, a nutrition programme with a free meal for each child; kitchen gardens, orchards, and sometimes even paddy fields developed on khas land or land donated to the balwadi by the villagers themselves and which were maintained by voluntary labour; an immunisation programme for the children; formal classes in health and nutrition; pre-natal and post-natal classes in child care; a Mahila samiti; and youth clubs. The balwadi building itself would be of better quality, and was sometimes even a pucca building. At the very least it would have a roof of CGI sheeting. It would probably be well-furnished inside, with tables. racks, almirahs and chairs. It would probably be well-furnished inside, with tables, racks, almirahs and chairs. It would also have many items of selected Montessori apparatus for the teaching of language and mathematics. A number of sewing machines for classes in tailoring might also be found.

Most important of all, however, the balwadi would be a true community institution, one that had been built up with the cooperation and help of the villagers themselves, often on land which had been donated by them. It was marked by a community commitment to, and involvement in, the programmes carried out by the balwadi. This community involvement has been remarked upon by many specialists in child welfare visiting the State who comment that they have not seen such a high degree of community participation in a balwadi programme elsewhere.

The programmes that had been established prior to 1972 continued for the most part in this period, but expansion of the full-fledged programme stopped. Over 200 new basic balwadis were opened however.

#### THE BALWADI PROGRAMME: 1972-1978

A new All-India programme, to be carried out in selected blocks in each State (often the most backward), the integrated child development scheme (ICDS), opened in Tripura in 1975 and eventually led to the addition of another 150 balwadis to the total already established in the State. Although a Central programme, it was implemented by the State Government through the social education section. Two new nutrition programmes also made their appearance in this period, the applied nutrition programme (a UNICEF programme) and the special nutrition programme which was implemented primarily in ICDS and other balwadis.

The ICDS programme has been launched in two blocks so far. The first was Chawmanu where 100 balwadis were opened. The second was Dumbarnagar, where there are now 50 balwadis. This is a tribal area, one of the most remote and backward parts of Tripura.

The ICDS was similar in many ways to the full-fledged Tripura balwadi programme. It included:

- 1. balwadi;
- 2. health programmes, immunisation of children, child-care and postnatal classes;
- 3. women's adult education, functional literacy and craft training; and
- 4. special nutrition programme and classes in nutrition.

There are a few respects in which the ICDS programme differs from the full-fledged balwadi programme, however. The ICDS balwadis are run by anganwadi workers who are paid an honorarium of Rs. 125-175 per month, depending on whether or not they are matriculates. Originally it was intended to recruit girls from the villages in which the balwadi would be placed, hence the lower level of payment. This did not prove possible in most cases and so the girls have to manage on very little, a fact which has created hardship for many of them. Most have been able to supplement their honorarium by giving classes in adult literacy. From these they can make another Rs. 50 per month.

By and large the ICDS programme is better supervised than the Tripura balwadi programme, with one supervisor to every 20 balwadis, a far more satisfactory arrangement than one supervisor for 50 to 100.

# Programme Objectives

The balwadi was still considered to be an important multipurpose educational institution in this period, but the stress on its importance as a community institution had diminished. In those areas where a community institution in the form of a full-fledged balwadi had been built up, the community involvement and pride in the balwadi continued. There were still many dedicated workers in the field and their work in the full-fledged balwadis continued even though the quality of guidance and direction they received from above was not of the same calibre as that of the former period. This was partly due to the fact of many changes in senior personnel in the education department and partly due to changes in the social climate and atmosphere.

The full-fledged balwadi programme began when enthusiasm for national and community development was still very high. After independence the strong impulse towards and enthusiasm for nation building had reached all corners of the country. Even the poorest of villagers might feel a certain pride in making his small contribution to this great national effort — although it might be only as little as a few days' labour spent in construction of a balwadi. Among the villagers who were better off, it became a rather prestigeous thing to contribute land for the balwadi, its orchards or kitchen garden. If family sentiment could be expressed through the naming of a balwadi in memory of a beloved mother or father, so much the better.

By the seventies, however, the willingness on the part of villagers to donate land to public institutions had almost disappeared. During the sixties and seventies the emphasis on the community doing things for itself had also changed. It gradually came to be the case that government did more and more and the community less and less. The desire on the part of the villagers to be self-reliant was no longer there. The idea that began to develop was: 'why should we do it when the government can?' The next idea that developed was: 'why should we do it when the government will?' The fact that the government came to do more and more took away the urge in people to do it for themselves.

This attitude gradually began to affect educational institutions. Prior to independence there were very few government schools. There was usually no more than one per district, and that at the district headquarters itself. Most of the other schools were private. Gradually, however, the government began taking over responsibility for education with a tremendous increase in the number of government-run, government-financed, primary and secondary schools.

Community development itself was based in the beginning on the idea that in community projects (the building of a road, school, or irrigation channel, for example), the government would give 50 per cent and the villagers 50 per cent. With the dwindling of the community development programme. this approach gradually disappeared. It became more and more difficult to get contributions from the people. In Tripura, for example, some school teachers were given targets—so many schools to be raised with public contributions. In constructing these 50 per cent of the cost would come from the government and 50 per cent from the villagers. It might have been possible for the teacher to raise two schools in this way, but not ten. Gradually, in selfdefence, they adopted a technique of fabrication in order to meet their targets. They would double the estimate of cost for the school building, get half from the government, build it with that amount, and say the other half of the estimate had come as contributions from the villagers (who, of course, had not given anything at all). Gradually, however, it came to be realised that the government had to assume most of the responsibility for these projects.

In this context, it became extremely difficult to establish new full-fledged balwadis based on community donations, participation and involvement. Instead, the new balwadis were closer to what the original balwadis had been, basically educational institutions with adult literacy classes and a few welfare and health programmes attached. The changed atmosphere created many difficulties that had not been there earlier in implementing and administering the programmes.

# Agricultural Programme

The decline in community involvement led to difficulties in finding volunteers to take care of the kitchen gardens, orchards and fisheries. This was

not usually a problem when feelings of community spirit were high. Then the male SEW would mobilise the youth to see that the orchards and gardens were cared for. Subsequently it became far more difficult to do this. In some cases a gardener was hired to look after the agricultural programme and given a hut in the orchard itself in order to keep an eye on it and prevent pilferage of the fruits and other garden produce. In some areas the gardens and orchards were simply not maintained. In others a male social education organiser (SEO) may have had to spend his time in taking care of them. Senior officials in the department began to question the value of having a male SEO or even an SEW spend his time in maintaining gardens when he had been hired to do educational work. In cases where the gardener's salary had to be paid, it was felt that the produce from the garden should at least cover the cost of his salary. The whole point of the programme, however, was not to sell the produce, but to provide food for the children's meal programme. The cost of this programme went up considerably when a gardener had to be hired.

### Nutrition Programme

The special nutrition programme was to be implemented by the tribal welfare department. It was a nutrition programme for the feeding of children between 3 and 6 and expectant mothers. It could be started anywhere where there was a need for it. Being a difficult programme to supervise it was put in the balwadis because these were convenient places for the children to collect.

There were many difficulties in implementing the programme. A great deal of effort was required to get food to the balwadi centres and some of the officers responsible were disinclined to do the work that was necessary. Special officers may be required in the long run to implement this programme as it is a heavy responsibility. There were many other problems as well. The supplies, when they did get to the balwadi, might have been rather late, and there might have been considerable pilferage. On other occasions the cook might not turn up at the balwadi. Still, where it did work well, the programme fulfilled an important role for those who most needed supplementary nutrition.

Interestingly, however, the special nutrition programme was rejected by the villagers in the north district who preferred to continue giving voluntary contributions of food themselves. This stemmed partly from the fact that the special nutrition programme covered not only the children who regularly attended the balwadi but also many others who only came to the balwadi for the meal. As this disrupted the regular balwadi programme, the villagers said they preferred to continue their own voluntary meal programme for the children attending the balwadi.

# Health Programme

There were many difficulties in implementing the health programme

particularly in ICDS blocks, due to the shortage of qualified workers. There are supposed to be 5 ANMs (auxilliary nurse-cum-midwife) and 2 health visitors but these positions were not filled due to the shortage of suitable health personnel.

Equipment

Tripura's reliance on equipment imported from other parts of India ended during this period when the Tripura Handloom and Handicraft Development Corporation (HHDC) began supplying locally made Montessori apparatus obtained from a private contractor. A set of Montessori apparatus for language and mathematics normally selling for Rs. 1600 was sold to Social Education for Rs. 1400 by the Corporation. The quality was considerably inferior to that of the original supplier and the element of profit extremely high. The major saving was in shipping costs from Hyderabad and the certainty of receiving the apparatus ordered. Some earlier shipments from Hyderabad had been badly pilfered en route.

It is possible, however, to make locally a wide variety of good quality, sturdy toys and educational apparatus suitable for balwadis at a very reasonable cost. This was demonstrated in a prototype project carried out at the Industries Department Design Centre in Agartala recently. Just to give one example, take the Montessori number rods. A set of number rods purchased from the official supplier cost Rs. 110. A set supplied by the Tripura HHDC cost Rs. 88. In the toys prototype project a similar number rod was made for between Rs. 15-20 (for raw materials and labour). Adding a reasonable amount for profit and overhead, it should still cost no more than Rs. 30.

But why is it necessary to make wooden number rods? Bamboo is abundantly available locally. A very good set of bamboo number rods which would be equally useful in teaching a child the basic concepts of length, number and measurements in centimetres, can be made for only Rs. 2-3. They might not last as long as a set of wooden number rods, but they could be replaced every two years for a long time and still be cheaper (and just as effective) than the more costly wooden ones, whether their price is Rs. 110, Rs. 88, or Rs. 30.

The Vikaswadi Experiment in Maharashtra also demonstrated that many varieties of low-cost educational equipment could be made to replace the more expensive Montessori apparatus but still teach the same concepts. In regard to such innovations those associated with the Vikaswadi Experiment in Kosbad are miles ahead of those working in the Tripura balwadi programme. Considerable research was carried out at Kosbad to find out how low-cost adaptations of Montessori apparatus could be made that would still teach the same concepts (Naik, 1978, pp. 8-10). This equipment was produced for and used in the Kosbad balwadis. The toys prototype project proved that many similar types of low-cost educational equipment could be made in Tripura, but unfortunately the results of this research have not been

able to reach the balwadis. No entrepreneurs enterprising enough to take up the supply of these items on a large scale at reasonable prices have come forward and the State Government has shown a disinclination to take up any project to see that they are produced.

Problems have been encountered in obtaining other teaching materials. A list of the minimum teaching materials required for the balwadis and adult literacy programme has been prepared. It includes slates, chalk, alphabet charts and blackboards. The Social Education Department would like to provide slates for all the children, 30-35 at least for each balwadi, but these cannot always be procured. They are made locally, but it is difficult to obtain slates of good quality. There is not always the sense of responsibility on the part of those making them to do the work well when they are given a large government order.

Another problem arising in connection with equipment has been the fact that the Montessori apparatus purchased in earlier years has not been maintained. Visiting many balwadis one will see sandpaper letters in which most of the sandpaper has worn away, number rods on which most of the paint has disappeared, spindle boxes with many of the counting spindles missing, and moveable alphabet sets that may have lost more than half of their letters. It is only to be expected that after 10-15 years there would be some deterioration in equipment and that some provision for maintenance or replacement would be required. It would certainly be possible to make repairs locally but no one seems inclined to go to the botheration of seeing that these elementary repairs are carried out.

#### Ideals

The sense of dedication that was characteristic of the earlier officers and workers in social education became much more difficult to find in those who were recruited for the programme in the seventies. A position as a social education worker came to be regarded as a job, just like any other job, and not as one requiring a high degree of dedication and commitment. The idea had begun to spread (and it was by no means confined to social education workers, it had become endemic in many other parts of the State Government), that one could collect his salary without having to do very much for it. A 'culture of lethargy' came to characterise many government departments and institutions and this affected social education workers as much as the others. A few of the senior officials tried to maintain the standard but they found themselves swimming against the tide without being strong enough or in numbers sufficiently large enough to overcome it.

Another serious problem stemmed from the fact that by the seventies many of those who had been successful and effective field level supervisors had been promoted to desk positions in the Education Directorate in Agartala, appointed as BDOs (Block Development Officers), transferred, or absorbed into higher levels of other State Government departments. These were the

officers who had been trained in community development and who had absorbed and assimilated its approach and ideals. Those replacing them had not had such a direct exposure to this approach and in many cases were not of the same calibre as the earlier officers and supervisors had been. To be fair to the new officers, however, they were not working at a time when the ideals of personal service and dedication to a cause like nation-building and community development were in the air as they had been earlier. All of these factors obviously had an effect on the quality and intensity of the programme.

Another factor that may have affected the ideals of those running the programme was the enormous growth in its size. Something that works on a pilot scale because of the efforts of a few dedicated and committed officers and workers cannot always be expanded indefinitely without some diluting of the original ideals. This was particularly true with the balwadi programme, based as it was on an intensely personal approach at all levels. In this context the fact that it did prove possible to create as many as 140 full-fledged balwadis was, in itself, a rather remarkable accomplishment. The lack of adequate supervisory personnel made it difficult to sustain the programme let alone increase it. Obviously it is not possible for a social education organiser with anywhere between 50-100 balwadis to supervise to give attention, inspiration and proper guidance to all.

Gradually, in the period between 1972-78, an institution began to evolve that was probably more in tune with changed times. The balwadi was still an important institution for the education of pre-school children and many adults in the community who wanted to take part in literacy programmes and other classes of practical value. It was still the point of articulation for a variety of health, nutrition and welfare services. Its facilities were certainly still used by the community and its leaders might show the balwadi and its gardens to VIP visitors with great pride, saying 'We built it all ourselves', but the fact still remained that it had shifted from being a community institution to being yet another bureaucratic, government-run and government-maintained institution.

This is a problem for any pilot project started by enthusiastic workers and which is enlarged on a much broader scale later. The problems of expansion become even more pronounced when the social climate for these activities is not a supportive one. Such was the condition during the seventies. One can only agree with Naik's conclusion that projects like a balwadi programme ultimately have "to be conducted and promoted by teachers and social workers possessing the strengths and weaknesses of ordinary people" (Naik, 1978, pp. 93-4).

There seem to be two alternate courses in such a situation. The first is to design a programme based on high ideals to be carried out by dedicated workers, try to instil these ideals into those who join the programme, give them as much physical and moral support as possible and then hope for the best. The other alternative may be more realistic in the long run.

That would be to make an assessment of what the trainees are most likely to be able to accomplish in carrying out the programme, the social atmosphere in which they will be working, the attitudes of the villagers in the areas where their programme will be placed, and then design a programme based on these facts which will be suitable for conditions as they exist. The Tripura balwadi programme started out following the first path. Possibly by the most recent period of its history when it has been under the direction of a CPI(M) ministry with political values which differ considerably from those of its predecessors in power, the balwadi programme has moved closer to the second alternative. The programme has changed considerably in the past year and a half since the election of the CPI(M) Government. The fact that it has not only continued but has actually been doubled, gives some indication of the fact that the new Government recognises the value of the programme and wants it to continue. It is only to be expected that there would be some changes. It is interesting to see these in the context of 1979, the International Year of the Child

#### THE BALWADI PROGRAMME IN 1979

As an indication of its concern for the children of the State, the CPI(M) Government drew up a 12-point programme to commemorate the IYC. Many of these are welfare measures for children, including the opening of destitute children's homes in three districts and special wards for children in two district hospitals.

The most important of the welfare programmes for this year, however, (and certainly at Rs. 14 lakhs the most expensive), is the opening of 600 new balwadis. A number of related welfare programmes for children will be implemented in the balwadis this year. Immunisation of all balwadi children will be carried out by the health directorate. This will include giving the triple antigen vaccination as well as vaccinations for smallpox, cholera, and polio.

There will also be a nutrition programme in the new balwadis opened this year. All of the balwadi children will be given a meal of rice and dal.

Something new in the balwadi programme now is the involvement of the gram panchayats. Earlier the panchayats were not given much responsibility. Now they are being directly involved in programmes and schemes for their own people by being given funds and actual programmes to implement and administer. Many of these are programmes for the welfare of children.

One of the ways in which the gram panchayats have become involved in the balwadi programme is that of having the responsibility for selecting the locations for the new balwadis. Previously the centres where they would be established were selected by social education officers on the basis of requests made by villagers who wanted a balwadi in their area. Now each panchayat is given a certain quota and they select the villages where the balwadis are to be located. As part of the CPI(M) Government's programme to decentralise administration, each social education district supervisor has been given sanctioning power of up to Rs. 2,000, but this sanctioning has to be done in consultation with the gram panchayats.

Selection of the school mother or *gram lakshmi*, who assists the balwadi worker, is done by the panchayats now. She is selected from the village in which the balwadi is placed.

The panchayats may also help to supervise the balwadi workers. According to the guidelines established by the education department, each SEW has two duties, conducting the children's programme in the morning and the women's programme in the afternoon. In practice, however, there have been many SEWs who did nothing for the rest of the day once the balwadi programme was finished. One education official stated:

With the coming of panchayat leadership this trend may be reversed. They are taking an interest in what is happening in the balwadis, in what the lower level government officials are doing. This could lead to a revival of the programmes that should exist over and above the normal programme.

Another way in which the panchayats may become involved in the balwadi programme in the future is to have responsibility for constructing and maintaining the balwadi building. There is now a feeling on the part of some members of the government that it may be too much of a burden on some of the poorer villagers to provide the building themselves, and that the government should be responsible for all expenses connected with its construction. These could be administered by the panchayats. Last year, for example, the panchayats were given funds for the maintenance and construction of primary schools throughout the State. Since that time there have been no problems with these buildings. Many schools were damaged and roofs blown away by the strong winds of the April Nor' westers this year, but they have all been repaired. In fact, it is hoped that it may be possible to complete all the primary school buildings in the State this year. Having been given the responsibility for building up the local schools and taking care of them, the panchayats have so far met this responsibility very well. The same pattern could be used for construction and maintenance of the balwadis with funds for this coming from the government.

Those associated with the earlier programme, however, feel that the villagers should contribute the largest part of the cost and labour in constructing the building. It is felt that only in this way will they have the feeling that the building is *theirs* and not the government's. They stress that this feeling is essential for the building up of a true community centre which is what the balwadi should be. Expecting the government to pay for everything, including construction of the building, is not such a good thing because it

fosters too much dependence on the government and breaks down the community's sense of self-reliance.

Much of that spirit, however, has gone already and a symptom of this may be seen in the fact that construction of primary schools and balwadis in some areas has become part of the new Food for Work programme (FFW) in the State. FFW labourers are also repairing balwadi buildings in areas where the villagers themselves have not become mobilised to do the work.

## Organisational Structure

In March, 1979, the organisational structure of the Social Education Section changed. Partly due to the growth in size of the programme, the Section was upgraded to that of a full 'wing' of the Education Directorate, and a Director of Social Education appointed. Previously the highest position in Social Education was that of Joint Director.

#### DIFFICULTIES IN ADMINISTERING THE PROGRAMME

The opening of 600 new balwadis in a single year has presented many of its own problems. Difficulties have been encountered in recruiting suitable staff for the balwadis, giving them adequate training, obtaining and constructing balwadi buildings, finding suitable accommodation in the villages for the balwadi workers, equipping the balwadis, and getting food and other supplies to the workers. The distances some of the girls have to go on foot to reach balwadis which have opened in the more remote and backward areas, where there may not even be roads, have also caused problems.

#### Recruitment

Originally it was thought that the balwadi worker would be selected locally, that a girl could be recruited from each village where the panchayat had decided to place a balwadi. As in the ICDS scheme, however, it was not possible to get a qualified girl from each village. The strategy finally adopted by the Education Minister for recruitment was to invite applications from girls who were matriculates, then a girl from the closest village to the balwadi was selected for appointment. That way, the girl would still be fairly close to her own home and family. Because of the difficulty of getting matriculates in all cases, particularly among the tribal girls, the requirement that the balwadi worker be a matriculate was relaxed.

A major criterion for selection was to give emphasis to girls who came from poor families. In addition, the government has not selected anyone with a close relative already in government service. Generally, they have tried to place Bengali girls in Bengali areas and tribal girls in tribal areas, matching the language of the balwadi worker with that of the village.

Training

It has not been possible to give the three months' training course to the new balwadi workers. There are no funds to give them long training and no institution large enough to accommodate them in any case, according to social education officials. They are, instead, being given orientation through a series of group meetings in 5-6 balwadis with the balwadi workers and school mothers. Their training has been described in this way:

They are assembled in one place from 7 a.m. to noon. We have some discussions. We discuss with them their duties and what they are supposed to do. What a balwadi is, and how it is different from a primary school. Then they are taken to a local balwadi so they can watch how it is functioning. This we are doing in the case of adult literacy teachers too. We can't give them good training, but we are discussing with them the objectives of the programme, how to use the materials and so on.

It however remains to be seen whether this type of limited orientation programme will adequately prepare the new workers for the important tasks they are required to do. There has been much criticism of the new balwadi programme for this reason.

Without training arrangements for so many people it will lead to chaos. They have not defined anything, what they will do, nobody knows. Previously a centre wasn't opened unless a trained teacher could be sent there. Nobody knows what these new 600 are doing. There is no administrative structure. They are only thinking about developing it now. Where is the equipment? Where is the accommodation? The balwadis were opened without thinking of any of these problems.

Some who were associated with the earlier balwadi programme feel that a much better use of the Rs. 14 lakhs being spent on the programme would have been to put more into training and equipping the balwadis. Even if there were no large training centres, the spirit of innovation that marked the early days of the balwadi programme, when a training course could be conducted in a tent placed in a paddy field in the period between harvests, could be invoked again to find some way to accommodate large groups of trainees. There are certainly enough social education organisers and social education workers in the State with qualifications to teach the many new recruits satisfactorily.

Balwadi workers in the earlier programme had to know something about health, nutrition and child care as well as pre-school education, and had to communicate these to the adults in the community. Responsibilities of this type are difficult to carry out without proper and careful training.

The anganwadi workers for the ICDS blocks are still being given four

months' training at the centre in Kakraban, however. Fifty girls are receiving training here. Concurrently the Tripura council for child welfare is giving its 11 month course at the gram sevika training centre in Arundhatinagar, Agartala. Normally fifty girls are also trained in this course.

#### CONCLUSIONS AND REFLECTIONS ON THE PROGRAMME

Although the Tripura balwadi programme has seen many changes during the four different periods of its twenty-year history, there can be no doubt about its value whether one is considering this from the point of view of full-fledged balwadis or basic balwadis only. The balwadi, in whatever form it appeared in Tripura, was, and continues to be, an important institution for child and community education. It is an interesting thought in this, the International Year of the Child, that the child himself could provide the entry point to such an important collection of community services. Particularly during the period of the full-fledged balwadi, adoption of a balwadi programme proved to be an effective means of building up community spirit, a community centre, and a place to offer services to the community. Once the balwadi programme began and a balwadi centre was established, those organising it could keep adding programmes to the original institution, which is what they did. But first of all they started with the child.

The opening of balwadis has been one of the most successful government programmes ever undertaken in the State if one can judge success by the degree of expansion and the many requests made by other villagers that the government open balwadis for their children also.

Unlike the situation reported by Naik at Kosbad Hill (Naik, 1978, p. 49 and 95), it has generally not been difficult to persuade Tripura parents to send their children to the balwadi nor has it been difficult to persuade the children to go—unless of course they had an unpopular teacher. From the beginning it appears that the villagers were able to appreciate the value of the balwadi. In fact, after the first few demonstration balwadis, it was the government policy to open balwadis only where the villagers themselves had requested that one be opened. The programme was always carefully explained to them so that they would have a full understanding of what the balwadi could do for them and their children.

It seems to be the case that from the time of the appearance of the earliest balwadis their educational value was considered by the villagers themselves to be of considerable importance. One should never underestimate the value to a busy and harassed mother of the opportunity of being able to send a preschool child to a place where he would be looked after safely for a few hours so that she could get on with her household tasks without distraction. But the balwadi was still not regarded as just a baby-sitting or baby-minding institution. At a very early stage in the programme it was the parents themselves who requested that the educational offerings of the balwadi be upgraded

so that their children would have some exposure to writing, reading, and mathematics.

It has been a widespread phenomenon throughout post-independence India that people from all levels of society have come to appreciate the value and importance of education. Earlier, an illiterate tribal agriculturalist might have been content to see his children follow in his footsteps with little thought or concern about their receiving any education. In the past twenty to twentyfive years, however, such attitudes have changed considerably and even tribals living in backward areas of remote States like Tripura see the value of exposing their children to educational opportunities as soon as possible. They may still drop out of school before completing class 5, but they will at least go for those few years and pick up the rudiments of an education. Hopefully, the next generation will go even farther. It is significant to note in this context that the Tripura Education Department has definite evidence of the fact that in the Kamalpur demonstration project area, which has always had the best balwadi programme, the school dropout rate is considerably lower than in the other sub-divisions, a fact which they directly attribute to participation of children in the balwadi programme.

From the point of view of government officials who are responsible for administering the programme, its main educational value is the fact that it helps to develop the school-going habit in young children, thereby giving a form and structure to their daily programme at a young and impressionable age. This has been observed to make the transition to full-time attendance at a primary school considerably easier for them.

Another important value of the balwadi programme as perceived by officials in the department is the improvement that it can make in the self-image of a child who comes from a backward, illiterate family. When admitted to primary school he sees that he is different from the children of educated parents who 'have already prepared their children so they have an edge over the children coming from homes with illiterate parents.'

According to the Tripura Education Secretary:

This can affect the whole psychology of the child. He is behind the children who come from educated homes, he knows it and feels it, even in the primary school level. He develops a self-definition that he is more ignorant than they are and this feeling of inferiority may never leave him. Going to the balwadi before entering primary school, he has a chance to pick up those things which the children from better homes learn from their own families.

If the children are not educated then their people will stay backward. Even illiterates understand that these days and they are sending their children to the balwadi and primary schools. The main value of the Tripura balwadi programme, therefore, has been that of helping to raise the general educational level of the people of the State. In particular, it has undoubtedly helped to improve the overall educational level of the poorest and the most backward children.

Another value of the balwadi is that of teaching children at the time when they are most capable of learning. Child psychologists seem to be almost unanimous in their agreement that the ages between 3-6 are the ones in which children are the most receptive to educational opportunities. This is the age when they are most full of curiosity and capable of acquiring quite astonishing amounts of knowledge, including additional languages, the ability to read and write, voluminous vocabularies and elements of mathematics up to and including multiplication and division. The problem with most conventional systems of education is the fact that they start the education of children after the most sensitive period for learning has passed. From that point on it is an uphill task trying to educate them. As proof of this fact one has only to compare the case in which a three-year old child can pick up as many as three languages with equal fluency in all, with the situation of a 10-year old child who is trying to acquire a second language. Even developed western countries have created serious problems in their educational systems by not responding to this basic situation of tremendous sensitivity to learning in the 3-6 age group. Most western primary schools do not accept children until they are 5 or 6 and only a fortunate few are able to go to a nursery school which can give them an adequate introduction to the world of learning. Those who can attend Montessori schools are the most fortunate of all, but unhappily, such schools tend to be available only to the urban elite in a few countries in the world.

One American child psychologist has even gone so far as to suggest that if a parent had to make a choice between borrowing money to send his child to a good nursery school when he is four or to go to a good college when he is 18, there is no question in his mind as to what the choice should be; a good nursery school (Dobson, 1970, p. 201).

From this point of view, Indian children who have an opportunity to attend balwadis with a well-designed and well-executed programme may be better off than many children in the more affluent west. In this respect India also seems to be well ahead of many other developing countries. In a survey of non-formal education for rural children and youth carried out for UNICEF, Coombs, Prosser and Ahmed state:

we have noted few organised community efforts to create opportunities for the systematic social development and growth of pre-school children (1973, p. 57).

In fact they conclude that pre-school age children are one of the 'most seriously neglected groups' insofar as receiving nonformal education is concerned (1973, p. 57).

By developing balwadi programmes which are often specifically designed for the children in rural and backward areas, India has taken very concrete and positive steps towards a goal which has been considered to be of great importance since independence, that of social justice. Given the conditions of great social inequality which exist in the country, children in rural areas still have a long way to go before they can catch up with their more sophisticated urban counterparts, but, at least, with the assistance of rural balwadi programmes in backward States like Tripura, they have been able to take the first steps towards achieving educational equality. With the right kind of guidance, continued allocation of resources, and firm direction, the next generation may come even closer to that goal.

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# Social Welfare System

The basic tenets and programmes of any social welfare system reflect the values of the society in which they function and, like all other social institutions, they do not arise in a vacuum; they stem from the customs, statutes, and practices of the past.

-From Poor Law to Welfare State, Walter I. Trattner, 1974.

# Management of Institutions for Children: A Delhi Study

K.B. Shukla

THE UNION Territory of Delhi with a high density of population of 2,738 persons per sq. km. and a continuous influx of people in the capital from all corners of the country in search of employment has led to a sharp population growth during the past few decades. Delhi's population which was 2.63 million in 1961 rose to 4.06 million in 1971. Of this, urban segment accounted for almost 90 per cent.\* Children were 1.57 million and formed 38.6 per cent of the total.

Thus, child care, juvenile delinquency, girls of tender age exposed to moral danger, broken families, accute congestion (with consequent lack of avenues of constructive recreation) and children living in slums are all problems that have to be viewed against the background of an accelerated pace of urbanisation coupled with a rapid rise in population. This has, in turn, necessitated the growth of a comprehensive and well-knit welfare infrastructure.

Social services in Delhi were in an embryo stage at the commencement of the First Plan, with only three Government managed institutions:

- (i) A children's home established in 1938, under the Bombay Children's Act as extended to Delhi;
- (ii) Lady Noyce school for the deaf and dumb; and
- (iii) Government rescue home for women and girls rescued from brothels.

Besides, six orphanages for children and two schools for the blind were also functioning.

During the successive five-year plan periods, social services for children in Delhi have considerably developed and the facility for case work treatment, medi-care, basic education and vocational training has been introduced. Sustained efforts have also been made to strengthen and expand institutional and non-institutional services to cater to the requirements of special categories of children such as those belonging to denotified tribes and healthy children of leprosy persons. The programmes and services for child welfare have

been accorded the highest priority, as a vital component of the planned development of social services, which are understood to mean "an organised attempt that aims at helping towards a mutual adjustment of individuals and their social environments."

#### SERVICES FOR CHILDREN IN DELHI

Delhi has, at present, 14 institutions for the care, education, training and rehabilitation of the destitutes and neglected children as also juvenile delinquents with an annual coverage of about 2,100 children. As against this, the foster home care services cover only about 500 children. Thus, in the absence of well-developed non-institutional child care services, as in the developed societies, institutionalisation still remains the main instrument for child care.

Broadly, the existing institutional services in Delhi are classified as statutory and non-statutory. These can be further categorised as correctional and non-correctional. Moreover, while the directorate of social welfare is directly responsible for managing the institutions under its control, its regulatory responsibilities extend to institutions run by voluntary organisation agencies, through the provisions of the Licensing of Institutions Act.

The statutory institutions are governed by the provisions of the Children Act 1960, enforced in 1962. In pursuance of the provisions contained in Delhi Children Rules, 1961, the Delhi Children (Management, Functions and Responsibilities of Special Schools, Children's Homes and Observation Homes) Rules, 1964 have been framed. These rules provide detailed guidelines for the principal functionaries, prescribe an exhaustive list of their duties and responsibilities and touch upon varied aspects of critical significance. Its comprehensive provisions for the custody, treatment, education and training of the inmates are applicable to non-government children's homes, special schools and observation homes certified or recognised under the Children Act, 1960.

Viewed against this background, the administration and management of institutions for children deserve detailed consideration in their various facets. They are of operational relevance to all those concerned with social services.

Even with a comparatively more diversified and developed network of institutional services for the welfare of children, certain operational aspects of institutional management need to be emphasised to bring about a certain degree of qualitative improvement. Some of these are: absence of suitable buildings, overcrowding; lack of job-oriented training facilities; shortage of trained personnel; paucity of funds; and inadequate attention to aftercare and rehabilitation aspects. Some recent studies have also underlined the need to make our institutions more 'humane'.

<sup>&</sup>lt;sup>1</sup>V. Jagannadham, "Social Administration" in Encyclopaedia of Social Work in India, Volume II, pp. 218-225.

Some of these issues came up before the Public Accounts Committee (PAC) of the Lok Sabha in 1973-74. The Committee had before it the report of the Comptroller and Auditor General of India for 1971-72, Union Government (Civil), which was laid on the table of the House in April 1973. The PAC, while examining the paragraphs relating to the Ministry of Education and Social Welfare, devoted its attention to the implementation of the various schemes and programmes in Delhi including those relating to the welfare of children.

### CHILDREN'S HOMES

The Committee was informed that four categories of children were sent to these institutions:

- 1. Those who have been begging and who have run away from their
- 2. Those who have no one to keep them—orphans:
- 3. Those who may have parents but whose parents are unable to look after them due to poverty or because they are uncontrollable; and
- 4. Those living in undesirable places as in brothels and known to be leading a depraved life."2

The children's home for boys at Kingsway Camp which previously functioned under the Children's Aid Society, from 1938 to 1950, was taken over by the Delhi Administration in 1951. It is the biggest children's institutution of its kind, functioning under the directorate of social welfare, Delhi Administration. The following table provides information regarding the average strength, the number of escapes, the percentage of escapes and total expenditure incurred during the period 1969-70 to 1972-73.3

	TO CHIL		

Year	Admission	Discharge	Average strength	No. of escapes	Total expenditure
(1)	(2)	(3)	(4)	(5)	(6)
					Rs. (lakhs)
1969-70	448	182	549	174	4.24
1970-71	575	494	665	192	5.76
1971-72	660	169	570	179	5.80
1972-73	582	241	578	234	8.68

From the information furnished to the Committee by the Ministry of

<sup>&</sup>lt;sup>2</sup>Public Accounts Committee (1973-74) Fifth Lok Sabha—129th Report, p. 43(2.38). <sup>3</sup>*Ibid.*, p. 46 (2.47).

Education and Social Welfare (Department of Social Welfare, Government of India), as also from the evidence given before it, the situation which emerged is summarised below:

- (i) On an average 500-600 children were kept in the children's home against the sanctioned capacity of 250.4
- (ii) The per capita expenditure in respect of some institutions for children not only showed variations but the expenditure on administrative overheads in certain cases also seemed to be fairly high. For instance, out of the total per capita expenditure of Rs. 191 in respect of a home for the mentally retarded children, administration accounted for Rs. 84 (43.08 per cent) per capita expenditure per month, and in another case the per capita expenditure on inmates per month was Rs. 107 i.e., 56.02 per cent.5

Viewed thus, the possibility of institutions investing a major portion of available resources on the staff component and infrastructure at the cost of beneficiary interests cannot be ruled out. To what extent cost benefit norms could be applied in this area is a question which admits of divergent answers, and the situation is yet to crystalise.

Another aspect of institution management which places a severe strain on the functionaries relates to the escape of inimates from the institutions. For instance, the number of inmates who escaped from the Children Home in Delhi and its annexues varied from 174 to 192 in each of the three years 1969-70 to 1971-72. This was attributed to shortage and unsatisfactory conditions of accommodation in the institution. It was also contended that this phenomenal escape was not the fault of the institution but was regarded as the part of the process of adjustment of a child.<sup>6</sup> It was, however, conceded that the causes leading to escape could be traced to the living conditions which were not conducive and the building housing this institution was overcrowded.<sup>7</sup> Simultaneously, the need for treating the children in a 'human fashion' was also underlined.

Thus, the shortage of accommodation, particularly in large metropolitan cities like Delhi, leads to overcrowding. The PAC which considered this aspect in some detail, in respect of institutions for children established and run under the Children's Act in Delhi, therefore, suggested that "as far as possible, it should be ensured that the actual strength of these homes is not much more than the sanctioned capacity, for which accommodation should be provided." Overcrowding in institutions, as in the case of overcrowded

<sup>&</sup>lt;sup>4</sup>Public Accounts Committee (1973-74), Fifth Lok Sabha, 129th Report, p. 48(2.55). <sup>5</sup>*Ibid*.

<sup>&</sup>lt;sup>6</sup>Ibid., p. 55(2.76).

<sup>7</sup>Ibid., p. 56(2.78).

<sup>&</sup>lt;sup>8</sup>Ibid., p. 59(2.87).

homes, leads to neglect of children. Very often, the atmosphere of tolerance, understanding and mutual trust which ought to prevail, is conspicuously missing.

The remedy obviously is that the optimum capacity of an institution should be fixed, having due regard to adequacy of accommodation, staff and other facilities. While this is conceded, it may not always be administratively feasible to keep inmate-population within prescribed limits, since children are admitted to these institutions through the juvenile courts/child welfare boards. It is just desirable that the variation in inmate-population should not be so sharp as to disrupt staff-inmate ratio leading to minimisation of contact, lack of rapport and an overall deterioration in the level of services which, even otherwise, falls short of the required standards.

### PERSONNEL

Staffing pattern of these institutions is another area which has hitherto remained largely neglected. Competent, qualified and efficient personnel are the essential pre-requisite of any organisation for the realisation of the objectives envisaged and the tasks assigned. A social worker, moreover, requires a higher degree of flexibility and adaptability to perform the complicated task of handling the child in a manner so as to facilitate the development of its potentialities. It has been emphasised that as against the impersonal routinism of the traditional administrative structures, "a concern for emphatic understanding, a comprehensiveness in approach and a personal warmth" are distinctive features of social administration.

A professionally trained social worker is better equipped, because of his knowledge and awareness of the techniques of social work, which in turn shape his approach, outlook and attitude towards the problems that have to be handled with competence, skill and commonsense. Experience has, however, been that in the absence of a well-defined staff development programme—an aspect commonly ignored or neglected in other areas of public administration—even the professionally trained personnel tend to develop a 'beaurocratic' and impersonal attitude. There is inadequate appreciation of the need and importance of in-service training of the personnel working in these institutions. Facilities for training of supervisory personnel, case-workers and other categories of staff are by and large non-existent.

Further, a well-developed institutional service presupposes development of suitably trained personnel and provision of facilities to meet the specific needs of the particular category of beneficiaries. In more specific terms, the management of institutions meant for children categorised as the destitute, the delinquent, or the homeless is bound to throw up problems different from

those established for the special groups such as the blind, the deaf and the dumb, the orthopaedically handicapped or the mentally-retarded. Perhaps, constraints of resources and staff as also other factors have hampered the growth of specialisation. Almost all categories of personnel are periodically moved, and inter-changeability and inter-transferability are an accepted norm. It is seldom realised that the impact of such change of personnel, in the final analysis, is detrimental to the interests of the children and negates the basic tenets of institutional care.

### **VOCATIONAL TRAINING**

It is envisaged that these institutions will provide comprehensive facilities for education, treatment and training of children. The terms 'treatment and training' are given a wider connotation, underlying the need of offering opportunities which would eventually facilitate the occupational adjustment of the inmate on his release from the institution. In pursuance of this objective, arrangements for imparting vocational training are invariably made, though the level and extent of these facilities show wide variation.

Broadly speaking, existing facilities for vocational training in the institutions suffer from two infirmities. Firstly, haphazard placements of tradetraining without recourse to vocational aptitude tests lead to waste of training effort and, secondly, the training imparted is not job-oriented. A recent study of the impact of institutions on children other than the delinquent sponsored by the Department of Health, Education and Welfare of the United States and conducted by the Indian Council of Child Welfare in Maharashtra has underlined the need of a constant review and evaluation of the training programme. The report has *inter alia* recommended that training in outmoded trades be discarded and instead "small trades, which will help the child to operate independently, with a small outlay, should be taught, where possible..." "10"

Another important aspect, which, if neglected, renders the training effort infructuous is the desirability of 'recognition' of the training by the competent authority. Unless the course is duly 'recognised', notwithstanding the proficiency gained by the trainee in a trade, his placement prospects in the government and the organised sector will most likely be severely limited.

#### **FINANCES**

There is ample evidence to support the view that "statutory social services suffer from a perennial shortage of funds in proportion to the rising expectations about the quantity, quality and variety of services needed...." While,

<sup>10</sup>Impact of Institutions on Children: Report of A Research Project on Rehabilitation of Children other than Delinquent under the Bombay Children Act, p. 101.

the quantum of funds allocated to government managed institutions, very often, have no relevance to the inmate population, voluntary agencies seldom succeed in bridging 'the gulf between needs and resources'. II Consequently, those responsible for managing the institutions face a situation where available funds are barely adequate to maintain prescribed standards of services. Information furnished to the PAC in respect of a children's home in Delhi will help to illustrate the situation. This institution with an average number of inmates of 578 incurred expenditure to the tune of Rs. 9.60 lakhs in 1972-73. The budget provision made for the subsequent year was Rs. 5.41 lakhs only. The Committee was informed: "Whatever budget we ask for, it is cut down according to the money available. Then we are supposed to ask for it again at the time of revised estimates."12

The Committee was further told that "Every year when we ask for a certain amount, the initial allotment is less and then it is supplemented through the revised budget."13

There is little to suggest that institutions in other States would be in any happier situation.

It is seldom realised that unless the funding of these institutions is need based, precious little can possibly be done in terms of qualitative services in a planned manner. Relatively more realistic appreciation of institutional needs at the appropriate stage of budget formulation would facilitate narrowing the wide gap between expectations and achievements.

### SOCIAL AUDIT

Another area which has hitherto been largely ignored, or accorded low priority, relates to evaluation of programmes with special reference to implementational issues. The application of performance audit to determine the efficacy of institutional services is perhaps nowhere so urgently needed as in this area of social administration. Financial audit, in terms of utilisation of funds, should give place to client-satisfaction as the more valid measure of assessment. In other words, 'social audit' instead of 'financial audit' is more relevant to administration of social services. Correctives should be sought and found for stagnation, apathy, cussedness and communication gap, generating an acute sense of alienation in the beneficiary group, and also for the growing insensitivity among the personnel—and these are commonly regarded as the negative features of institutionalisation. With the adoption of social audit one of the unsolicited gains would be a substantial reduction in per capita expenditure.

<sup>&</sup>lt;sup>11</sup>V. Jagannadham, op. cit.

<sup>&</sup>lt;sup>12</sup>Public Accounts Committee, 5th Lok Sabha, 129th Report, p. 50(2.62).

<sup>&</sup>lt;sup>13</sup>*Ibid*, p. 50(2.63).

Organised voluntary effort has always occupied a place of primacy in the sphere of social welfare. Successive five-year plans have recognised the pivotal position of voluntary agencies. The establishment of the Central Social Welfare Board in 1953 by the Government of India was designed to strengthen the voluntary sector. Likewise, the Central Institute of Research and Training in Public Cooperation set up in 1961 was intended to strengthen and promote voluntary action and develop community participation. It was also envisaged that the Institute will act as a liaison between the Government and voluntary agencies.

Over a period of years, voluntary agencies have diversified and expanded their activities, covering almost every area of social work. Numerous organisations, spread over the country, are today engaged in the task of alleviating human misery in all shapes and forms, striving to transform the texture of society through dedicated work. Quite a few of these such as the Children Aid Society have done commendable work in managing a network of institutional/non-institutional services in Bombay. Likewise, in Delhi, voluntary organisations such as Mobile Creches, SOS Children's Village, Bal Sahyog, Blind Relief Association, etc., have made steady attempts to reach those who somehow remain largely untouched.

However, supplemental efforts of voluntary agencies, though substantial, fail to have the desired impact for want of adequate funds, shortage of trained manpower, lack of scientific identification of problems requiring social action, inadequately or inefficiently organised programmes, and negligible facilities for in-service training of the employees. Lack of coordination amongst the voluntary agencies, horizontal as well as vertical, leads to duplication of efforts. Dissensions, unhealthy jealousies and competitiveness are some other features which tend to aggravate the malaise afflicting voluntary agencies/organisations in a large measure. Their dependence on government for funds is another debilitating factor.

Simplification of the procedure for the release of grant-in-aid to voluntary agencies, its timely release without tears, rationalisation of the criteria for assessment of the requirement of funds, government assistance in providing training facilities, professional consultancy, programme-planning, etc.; mobilisation of public support for community participation; an institutional mechanism to facilitate an appreciative awareness of their emerging needs; exchange of information and ideas; and creation of a central registry and clearing house for all social welfare agencies are, in brief, some of the directions for change.

While the operational aspects of the government managed institutional services have frequently been criticised on grounds of bureaucratic methods of work, unimaginative rule-oriented approach, and singular lack of empathy, the very concept of institutionalisation has begun to be questioned during the past two decades or so. The efficacy of institutional services as an instrument of education, treatment and rehabilitation of the child is seriously doubted.

It is being increasingly recognised that institutional services, as at present, are hardly in a position to ensure in adequate measure the psycho-social development of the children placed in their care.

It is in this context that a new pattern of living for children in need of care, adopted by the SOS children's village movement in India, seems to be of significance. In a SOS children's village at Bawana in Delhi, orphan children, 8-10 in number and of different age groups are kept in a cottage under the affectionate care of a house mother and in a home-like environment.

Indeed, developments such as the SOS children's village movement offer an entirely new perspective for child care. Conceptually, it repudiates the basic assumptions on which institutionalisation as a system is founded and reared. Operationally, it has effectively demonstrated its intrinsic superiority over the conventional pattern.

If a nation's children are regarded as its 'supremely important asset' and if the general theme of 'reaching the deprived child' adopted for the International Year of the Child is to have any content, specific and practical action, linked with achievable goals, must be designed and developed and an optimal utilisation of available resources ensured.

Options are there, they need to be further explored. Until these options are discovered and they gain acceptance, implementational aspects of child care, in relation to management and administration, will continue to be a problem.

### Child is not Statistics

"Mr. Minister, you have quoted some statistics of the handicapped, the ailing and so on. But anybody who deals with children must realise that they are not statistics. Each child is an individual and unless our education recognises him as such, we will be compounding the mistake which we have so far made in education."

—The Prime Minister, at the National Children's Board Inaugural Meeting, Vigyan Bhavan, 1974-75.

### Integrated Child Development Services Scheme: A Study of Its Health Component in a Delhi Anganwadi

J.P. Gupta, V.K. Manchanda, R.K. Juyal and C.B. Joshi\*

THILD WELFARE services, meant to cover preschool children (i.e., 0.6 vears), could not draw much attention of the Government till late fifties. The earlier efforts (i.e., during pre-independence era) centred round the missionary initiatives or voluntary organisations catering to the perceived needs of slum dwellers in larger cities and the services were rendered through 'clinic approach'. Even after the establishment of primary health centres (PHCs) with their sub-centres in the rural areas (1952) and the strengthening of family planning centres in the urban areas (1958), the focus of services rendered by these institutions remained on provision of services to the people in the reproductive age group. Perhaps due to the more urgent requirement to control communicable diseases or due to the paucity of funds the required attention was not given to child welfare services even when the infrastructure for basic health services had been set up in the country. However, the Government being seized with the problem appointed the Study Team on Social Welfare and Welfare of Backward Classes (1959) which took up the case of neglected child health care and suggested certain measures. This further led to the appointment of various committees in between 1960-1972. The recommendations of these committees centered around the provision of more curative, preventive and promotive services for the child population and integration of these services with the general health services. Consequently, the integrated child demonstration projects were launched during the Third Plan period. This was followed by family and child welfare projects sponsored by the Central Social Welfare Board. The basic aim behind these projects

<sup>\*</sup> The authors are thankful to the Director, NIHFW for giving permission to develop the study, and also to Development Commissioner and Director, Social Welfare, Delhi Administration for allowing the study in the project area. Thanks are due to all the staff of the project, as well as the research staff of the department of planning and evaluation, NIHFW, New Delhi.

<sup>&</sup>lt;sup>1</sup>Child Care Committee (1960); Health Survey and Planning Committee (1962); Committee for Preparation of Programme for Children (1968) and the Study Group on Pre-School Education (1972).

was the provision of integrated health, nutrition and welfare services to children. However, the results obtained from these projects were not very encouraging.

Finally, the recommendations of various committees enabled the Government of India to adopt a resolution laying down the national policy for children (October, 1974), which ultimately formed the basis for setting up a National Children's Board (December, 1974) to coordinate, integrate, review and thereby suggest modification in the priorities accorded to different programmes. One of the outcome of these steps was the concept of integrated child development services (ICDS) scheme.

### SALIENT FEATURES OF THE SCHEME

Each ICDS project covers one development block with an estimated population of 100,000. The delivery of services is to be organised by opening 100 anganwadis, each covering a population of 1,000 and manned by an anganwadi worker. These workers are supervised by 4 to 5 supervisors, who are under a child development project officer (CDPO)—the chief executive of the project—and are responsible for looking into their day-to-day problems of anganwadi workers, who are females. Keeping in view the crucial role she has to play, her selection criteria, training and job responsibilities have been clearly laid down in the scheme. The number of beneficiaries for each target group for rural, urban and tribal projects has been hypothetically worked out.

In each project, the existing health staff of the attached MCH and family planning centres and the additional staff provided from the ICDS budget, work as a single unit and are jointly responsible for the achievement of the health targets in respect of health check-up, immunisation and referral. The health department is also responsible for health and nutrition education to women between the age group 15-44 years as also for the training of the personnel in the delivery of health services.

The experimental nature of the scheme and the package of services envisaged obviously call for a number of studies on the various aspects of its functioning so as to provide useful data to effect improvement in the scheme before its extension. Hence a study was taken up at one of the projects at the Jama Masjid area of Delhi, particularly with reference to the health component envisaged under the scheme. The data of this study has been utilised for this paper.

### OBJECTIVES OF THE STUDY

The objectives of the study were:

(i) to study the fulfilment of criteria of selection of the anganwadi

- workers and adequacy of training undergone by them;
- (ii) to determine the type and frequency of health services provided by the anganwadi workers;
- (iii) to assess the community perception, satisfaction and participation in the scheme and its utilisation by them; and
- (iv) to identify the operational problems of anganwadi workers.

The sample size and method of data collection in respect of various objectives of the study have been summerised in Table 1.

TABLE 1 SAMPLE SIZE AND METHODS OF DATA COLLECTION FOR THE STUDY

Objectives	Sample Size	Methods of Data Collection
1. Objective I	All the 100 anganwadis workers of the study area.	(i) A retrospective study of the records, available at CDPO office.
		(ii) Interviews of the officers at various levels.
		(iii) Multiple choice test items administered to the angan- wadi workers.
2. Objective II	50, out of 100 anganwadis were selected randomly for retros-	(i) Record study of the anganwadis.
	pective study of records to collect data on services provided. Fur-	(ii) Observation study (i.e., for 6 consecutive working days)
	ther 25, out of 50 already selected anganwadis, were selected randomly for prospective study to assess the time utilisation by the workers.	
3. Objective III	8 families from each of the 50 anganwadis already selected for objective II, were selected. From this a sample size of 400 respondents (307 beneficiaries and 93 non-beneficiaries) was	Interviews of the respondents selected from the community.
4. Objective IV	worked out. The sample size already drawn in relation to objective II (i.e., 50 anganwadis), was relied upon for this objective also.	Interviews of the anganwadi workers and other officials.

The ICDS project at Jama Masjid was initiated in October, 1975, with the opening of 27 anganwadis and this number rose to 100 by June, 1977; of these 100 anganwadis, 52 were in predominantly Muslim and 48 were in predominantly Hindu areas.

The scheme comprises of the slum areas of Jama Masjid, Matia Mahal, Turkman Gate and Ajmeri Gate lying on the fringe of the walled city and covers around three wards of the Municipal Corporation of Delhi. There are three maternity and child welfare centres and two maternity and one general hospital in the vicinity of the area to work as referral institutions for the scheme.

The population of the area according to 1971 census was 123,270 of which 54.2 per cent were males and 45.7 per cent females. Approximately half the population consists of Muslims and the other half are Hindus (mostly belonging to balmiki, chamar and dhobi castes) who are economically and socially backward, comprising of artisans, wage earners in factories and shops.

In September, 1977, the population covered by the project was 95,493. A total number of 10,101 out of 15,793 (64.0 per cent) of children and 2,104 out of 4,072 (51.6 per cent) of expectant and nursing mothers were registered with anganwadis.

### STUDY FINDINGS

The findings related to the objectives of the study are presented in four sections below.

Fulfilment of Criteria of Selection of Anganwadi Workers (n=100)

Sex: All the anganwadi workers of the study area were females fulfilling the criteria prescribed.

Age: All the anganwadi workers of the study area were within the prescribed age range (i.e., 18-45 years) and 83 per cent of them were in the age groups of 18-27 years.

Educational Status: Amongst the anganwadi workers, 6 were undermatric, 61 were matric/higher secondary, 13 intermediate, 16 graduates and 4 post-graduates. The prescribed criteria of educational qualifications for urban area (i.e., matric/higher secondary) was not fulfilled in 6 per cent of the cases.

Religion and Community Served by the Workers: Of 100 anganwadi workers, 33 were Muslims, 63 Hindus, 3 Sikhs and one Christian. It was found that only in 77 (33 out of 52 predominantly Muslim and 44 out of 48 predominantly Hindu) anganwadis the workers of the same community were serving as envisaged under the criteria.

Residence: Only 64 per cent anganwadi workers were residing in the project area while 36 per cent were commuting from outside. As such, the requirement of local residence was not adhered to in 36 per cent cases.

Acceptance by the Community: Study of responses of the community shows that 98.4 per cent beneficiaries and 36.6 per cent non-beneficiaries were satisfied with the contacts made by the anganwadi workers.

Adequacy of Training Undergone (n=100): The results obtained by administering of multiple choice test items to 94 out of 100 workers present on the day of test are shown in the Table 2.

Group of Anganwadi Workers		Scores	
group of Augustian reviews	Mean	Standard Deviation	Range
Trained $(n=85)$	32.5	5.7	4-42
Untrained $(n=9)$	31.8	4.0	25-38
Absent during test $(n=6)$			
Sub-total	32.4	5.6	4-42

TABLE 2 SCORES OBTAINED BY THE WORKERS

The scores obtained by the workers do not show any significant difference between those trained and untrained.

Type and Frequency of Health Services (n=50)

The findings in respect of 5,349 (2,847 in Muslim and 2,502 in predominantly Hindu anganwadis) children (0-6 years) registered with 50 (27 Muslim and 23 Hindu) anganwadis are discussed below.

Serial Recording of Weight for Age: The anganwadi workers are to take the weight of each child once in every month. This target was achieved to the extent of 60 per cent and 57.9 per cent cases in Muslim and Hindu anganwadis respectively.

Nutritional Status: The distribution of children according to five grade of nutritional status is shown in Table 3.

TABLE 3 PERCENTAGE	DISTRIBUTION OF	CHILDREN	ACCORDING	TO
NI	JTRITIONAL STATUS	(n=5,349)		

Grades of		Total				
Nutrition	Hindu(n=23)		Muslim	Muslim $(n=27)$		= 50)
	At Regis- tration	At the time of Study	At Regis- tration	At the time of Study	At Regis- tration	At the time of Study
Normal	22.5	23.9	31.3	31.8	27.2	28.2
First <sup>1</sup>	33.4	40.6	37.3	42.0	35.5	41.3
Second <sup>2</sup>	30.3	27.4	24.7	21.2	27.3	24.1
Third <sup>3</sup>	10.2	6.4	5.7	4.4	7.8	5.3
Fourth <sup>4</sup>	3.6	1.7	1.0	0.6	2.2	1.1
Sub-total	100.0	100.0	100.0	100.0	100.0	100.0
Nutritional grading not done	8.1	20.2	5.5	18.4	6.7	19.2

<sup>&</sup>lt;sup>1</sup> Slightly malnourished.

The grading of children according to their nutritional status was not done

<sup>&</sup>lt;sup>3</sup> Severely malnourished.

<sup>&</sup>lt;sup>8</sup> Moderately malnourished.

<sup>&</sup>lt;sup>4</sup> Severely malnourished requiring hospitalisation.

in the case of 6.7 per cent and 19.2 per cent children at the time of their registration at the anganwadis and at the time of the study respectively.

More children in the Hindu group of anganwadis were in the malnourished grades, both at the time of registration as well as at the time of the study. This table also shows that the nutritional status of children had improved in both the groups, more so in the Hindu group, perhaps due to the supplementary nutrition given at the anganwadis.

Supplementary Nutrition: The distribution of children according to the supplementary nutrition is shown in Table 4.

Table 4 PERCENTAGE DISTRIBUTION OF CHILDREN ACCORDING TO SUPPLEMENTARY NUTRITION GIVEN (n=5,349)

Group of	Suj	Supplementary Nutrition				
Anganwadi	Not given	Given/ty	pe of	(n=50)		
		Normal	Special			
Hindu ( <i>n</i> =23) Muslim ( <i>n</i> =27)	19.7 25.3	73.2 70.4	7.1 4.3	100.0 100.0		
Total	22.7	71.7	5.6	100.0		

At the time of the study 30.5 per cent children were in the nutrition grades entitled for supplementary nutrition (second, third and fourth). However it was being provided to more (77.3 per cent) children than were entitled as per the criteria of selection.

Immunisation: The percentage distribution of children according to immunisation given is shown in Table 5.

Table 5 PERCENTAGE DISTRIBUTION OF CHILDREN ACCORDING TO IMMUNISATIONS GIVEN (n=5,349)

Immunisation	No. of	children
inmunisation	Given	Not given
Smallpox	90.4	9.6
BCG	64.6	35.4
DPT	63.4	36.6
DT	2.1	97.9
Polio	32.7	67.3
TAB		98.9

The main accent of immunisation was on smallpox, BCG and DPT while in other cases the coverage was low.

Health Check-up: Health check-up was given to 21.7 per cent and 31.8 per cent of children in the Muslim and Hindu anganwadis respectively. The

stay of children in anganwadi and number of health check-ups given is shown in Table 6.

TABLE 6 PERCENTAGE DISTRIBUTION OF CHILDREN	ACCORDING TO
STAY AT ANGANWADI AND NUMBER OF TIMES	GENERAL
CHECK-UP GIVEN $(n=5,349)$	

Stay of children	T-4-1	Genera	l check-up		Numbe	r of times	,
at Anganwadi (months)	Total	Not given	Given	1	2	3	4+
0-5	100.0	83.3	16.7	13.6	2.1	0.8	0.2
6—11	100.0	65.4	34.6	20.0	8.2	5.2	1.2
12+	100.0	51.9	48.1	22.2	15.2	8.3	2.4
Total	100.0	73.6	26.4	16.9	5.6	3.2	0.7

This table does not show any relationship between stay of children and the number of check-ups given, 51.9 per cent of those who had a stay of 12 months or more had not been given a single check-up against possible 2 or more. Similarly 6.4 per cent of those with a stay of up to 11 months and entitled to two check-ups had received three or more. Further, as prescribed, the children in the third and fourth grades (Table 3), must receive immediate and more frequent check-ups, but it was found that 42.9 per cent and 25.7 per cent children in these groups, respectively, did not receive a single check-up.

Supplementary Nutrition to Expectant and Nursing Mothers: At the time of study (September 1977) there were 4,072 mothers in the area, as per survey of workers, and 2,104 (51.6 per cent) were registered with anganwadi and 1,522 (37.3 per cent), were getting supplementary nutrition.

Deworming: Only 2.1 per cent children, 1.6 per cent in Muslim group and 2.8 per cent in Hindu group of anganwadis had received deworming therapy.

Vitamin A: Each child is to get a dose of 'vitamin-A' once in every 6 months but it was found that 34.7 per cent (36.9 per cent in Muslim and 32.3 per cent in Hindu anganwadis) did not receive a single dose. The break up of doses shows that only 24.6 per cent out of 48.4 per cent of children (Table 6) had received more than two doses as prescribed.

Referrals: The percentage distribution of children according to the referrals made and the relationship between referrals and nutrition status of children is shown in Table 7.

It can be seen that only 3.2 per cent children had been referred to specialised institutions at one time or the other. However, when related to nutritional status of the children, it can be seen that 80.7 per cent of children in nutrition grade four, who should have been referred for specialised treatment, were not given any referrals.

Observation Study: The percentage time per activity per day for the

different activities grouped into health, non-health and productive and non-productive activities is presented in Table 8.

TABLE 7 PERCENTAGE DISTRIBUTION OF NUTRITIONAL STATUS OF CHILDREN AND REFERRALS MADE (n=5,349)

Nutritional		Referrals		
Grade	Given	Not given		
Normal	1.3	98.7	100.0	
First	1.9	98.1	100.0	
Second	4.3	95.7	100.0	
Third	10.6	89.4	100.0	
Fourth	19.3	80.7	100.0	
Grading not done		6.7	100.0	
Total	3.2	96.8	100.0	

TABLE 8 UTILISATION OF THE AVAILABLE TIME AMONG DIFFERENT GROUPS OF ACTIVITIES

	Activity	Time devoted per act (percentage)	tivity per day
Ī.	Productive		
	A. Health and related activities		
	(i) Supplementary nutrition	8.3	
	(ii) Health check-up	4.2	
	(iii) Health & Nutrition education	1.3	
	(iv) Immunisation	1.4	
	(v) Home visit	5.7	
	Sub-total		20.9
	B. Others (non-health)		
	(i) Cleaning & preparing anganwadi	3.5	
	(ii) Non-formal pre-school education	15.1	
	(iii) Records	14.4	
	(iv) Functional literacy	7.1	
	(v) Meetings	5.0	
	(vi) Collecting pay, repairs, etc.	9.1	
	Sub-total		54.2
II.	Non-Productive		
	(i) Necessary physical requirements	3.2	
	(ii) Unavoidables	4.4	
	(iii) Idle	6.9	
	(iv) Arrived late	2.1	
	(v) Absent	8.3	
	Sub-total		24.9
	Total	100.0	

Out of the non-productive time of 24.9 per cent per day, 7.6 per cent was spent on necessary physical requirements and unavoidables, while a major

portion 17.3 per cent was related to sitting idle, late arrival and absence from

anganwadi.

It is further seen that out of the time spent (20.9 per cent) by the anganwadi worker on health and related activities at the anganwadi, a major portion was spent on supplementary nutrition (39.5 per cent) and health check-up (20.2 per cent).

Perception Utilisation, Satisfaction and Participation of the Community (n=400)

The findings obtained through 400 (152 Muslims and 248 Hindus) interviews of the community members are discussed below.

Perception: The responses of the community members, both beneficiaries and non-beneficiaries, regarding the source of first information about the presence of anganwadi, frequency and purpose of visit of the workers to families, community knowledge about services rendered, are summarised in the Table 9.

TABLE 9 PERCENTAGE DISTRIBUTION OF RESPONSES REGARDING PERCEPTION OF COMMUNITY

Item of Information	Beneficiaries $(n=307)$	Non-beneficiaries (n=93)
*1. Source of initial knowledge		
(i) Anganwadi worker	77.2	73.1
(ii) Children in family	10.1	6.5
(iii) Neighbours	9.1	9.7
2. Frequency of contact made by the work	er	
(i) Often	33.9	16.1
(ii) Occasional	66.1	71.0
3. Purpose of contact made		
(i) Inform about services	17.6	9.7
(ii) Collect children	36.8	49.5
(iii) Enquire about health	32.9	16.1
4. Number and type of services known		
(i) Five and more types of services	48.9	11.8

<sup>\*</sup> The main items of information have been shown in the table and as such the percentages may not add to 100 per cent.

The main source of initial knowledge about the anganwadi was through the workers, who made contacts with the beneficiaries more often than nonbeneficiaries, the main purpose of contact being collection of children. Majority of beneficiaries knew about more than five services.

Utilisation of Services: For assessing the utilisation of services, the respondents were asked about the location of the anganwadis, regularity of their visiting anganwadi and the number of services availed. The responses regarding location and regularity are summersised and given in Table 10.

The non-beneficiaries are largely not satisfied with the location of the

TABLE 10 PERCENTAGE DISTRIBUTION OF THE RESPONSES OF COMMUNITY REGARDING LOCATION AND REGULARITY OF VISITING ANGANWADI

Item of information	Beneficiaries $(n=307)$	Non-beneficiaries (n=93)
1. Location		
(i) Satisfied	97.7	64.5
(ii) Not satisfied	2.3	35.5
2. Causes of dissatisfaction		
(i) Distance is more	1.0	7.5
(ii) Location unhygienic	1.3	14.0
(iii) Inhabited by community unacceptal	ole —	14.0
to respondents		
3. Utilising services		
(i) Regular	98.7	
(ii) Not regularly	1.3	
(iii) Seldom		17.2
(iv) Never	day <u>il</u> berki	82.8

anganwadis, the main cause being the social insanitary environment. As expected only 17.2 per cent beneficiaries have on some occasion availed the services, the main causes being not interested (32.3 per cent), children going to school (17.1) and no one to escort the children (10.8).

The responses regarding the number of services availed vis-a-vis the number known are given in the Table 11.

TABLE 11 PERCENTAGE DISTRIBUTION OF COMMUNITY MEMBERS ACCORDING TO NUMBER OF SERVICES KNOWN AND AVAILED

Number of services	Beneficia	n = 307	Non-benefi	Non-beneficiaries (n=93)		
Services	known	availed	known	availed		
One	10.7	9.8	17.2	1.1		
Two	13.7	12.1	18.3	2.2		
Three	11.4	16.3	14.0	3.2		
Four	15.3	21.5	20.4	8.5		
Five and more	48.9	40.3	11.8	2.2		
No response	_		18.3	82.8		
Total	100.0	100.0	100.0	100.0		

The utilisation of services by beneficiaries was 100 per cent while it was 17.2 per cent only in the case of non-beneficiaries. Of the beneficiaries 40.3 per cent had utilised five or more services while only 2.2 per cent non-beneficiaries had availed of these at one time or the other.

Satisfaction: It was found that 97.1 per cent of beneficiaries were satisfied with the services; of the 17.2 per cent non-beneficiaries who utilised the services, half did not comment while the remaining were not satisfied. The

reasons of dissatisfaction of the community were, quality of food (1.3 per cent beneficiaries and 3.2 per cent non-beneficiaries) quantity of food (0.9 per cent beneficiary and 3.2 per cent non-beneficiaries) and more medicines required (0.7 per cent beneficiaries and 2.2 per cent non-beneficiaries).

Usefulness of Services: 89.3 per cent beneficiaries and 12.9 per cent non-beneficiaries felt that services given by anganwadi workers were useful. Only 2.6 per cent of beneficiaries and 3.2 per cent of non-beneficiaries felt that the services provided were not useful.

Contact with Workers: The community (82.3 per cent) felt that the contact made by the workers was useful. 1.3 per cent beneficiaries and 62.3 per cent non-beneficiaries did not comment.

Participation: The percentage distribution of beneficiaries and nonbeneficiaries who had rendered help, and the purpose for which such help had been rendered, are presented in Table 12.

TABLE 12	PERCENTAGE	DISTRIBUTION O	F RESPONDENTS	ACCORDING TO
		TYPE OF HELI	GIVEN	

Type of help	Beneficiaries $(n=307)$	Non-beneficiaries (n=93)	Tota <b>l</b>
Donation of cash and kind	16.0	1.1	12.5
Looking after the children	6.5	3.2	5.8
Cleaning and washing the anganwadi	1.6	1.1	1.5
Supply of water	1.3		1.0
No help	74.6	94.6	79.2
Total	100.0	100.0	100.0

From the above table it can be seen that 25.4 per cent beneficiaries and 5.4 per cent non-beneficiaries had helped the anganwadi workers in one form or the other.

Operational Problems of the Anganwadi Workers (n=50)

The problems expressed by the anganwadi workers in respect of their job functions are as follows:

Health Check-up: Thirty per cent of the workers felt problems regarding health check-up. The difficulties were carrying the children to the centre at their own risk (12 per cent) and M.O./LHV net visiting the anganwadis regularly and on fixed dates.

Immunisation: The percentage distribution of workers according to problems faced by them in relation to immunisation programme is shown in Table 13.

Forty-two per cent of the workers found collecting children for immunisations as a problem, and of these (12 per cent) attributed the reasons for this to the lack of prior information regarding the visits of the LHVs to anganwadis for immunisation.

TABLE 13 PERCENTAGE DISTRIBUTION OF ANGANWADI WORKERS ACCORDING TO THEIR PROBLEMS REGARDING IMMUNISATION PROGRAMME

No. of		Nature of Problems				
Type of functions workers reporting problems	LHV does not help	LHV comes without prior in- formation	Taking children to angan- wadi for polio vac.	Side effects not followed up	Have to tell parents repeatedly	
1. Immunisation	24	24				
2. Collecting children for immunisation	42		12	6	6	18
3. Educating parents	26	20		- L		6
4. Follow-up	8		_	<u></u> -	8	

Expectant and Nursing Mothers: The percentage distribution of workers according to problems faced by them in rendering services to the expectant and nursing mothers is shown in Table 14.

Table 14 PERCENTAGE DISTRIBUTION OF ANGANWADI WORKERS IN RELATION TO THE PROBLEMS OF SERVICES TO EXPECTANT AND NURSING MOTHERS

Type of Functions we re	No. of workers		Won't			
	reporting problems	Ladies hesitate to tell	Ladies do not like to go to the centre	Big hos- pitals nearby	No help from health staff	food as supplied
1. Enlisting expectant mothers	12	10			2 1 3 3 3 3 4 3 5 5 5	
2. Ante-natal and post-natal check-up	18		8	10		
3. Supplementary nutrition	32					32
<ol> <li>Imparting education to pregnant and nursing mothers</li> </ol>	1 4			4) <u>4</u> 69 11 14 1	4	
5. Home visits	60				60	

The majority (60 per cent) of workers found home visiting a problem especially due to lack of help from health staff; 32 per cent of the workers said the ladies would not like the food offered under the supplementary nutrition programme. Twelve per cent and 18 per cent of the workers felt difficulties in enlisting the mothers for ante-natal and post-natal check-up respectively.

Supplementary Nutrition: The percentage distribution of workers according to problems faced by them regarding supplementary nutrition is shown in Table 15.

TABLE 15 PERCENTAGE DISTRIBUTION OF ANGANWADI WORKERS IN RESPECT OF THE PROBLEMS OF SUPPLEMENTARY NUTRITION

Problems in wo relation to rej	No. of workers		oblems			
	reporting problems	Have to store in gunny bags	Have to borrow from community	Cook outside	Distant sources	Won't take home food
1. Equipment for:						
(i) Storage of food	6	6		_		-
(ii) Cooking of food	10		10	_		
2. Space for cooking at anganwadi	14			14		<del></del>
3. Procurement of kerosene oil and food articles	44				44	
4. Distribution of food at anganwadis	1 32					32

The supplies (44 per cent) and distribution of food at anganwadi (32 per cent) are the problematic areas related to this activity.

Records: Forty-four per cent of the workers complained that there was a duplication of certain records such as health and immunisation records on weight books, health cards and immunisation cards and daily diary movement register and attendance registers for the same purpose.

Personal Problems of Anganwadi Workers: Apart from operational problems, the workers pointed out certain other problems related to honorarium, travelling from residence to anganwadi, leave and working space, etc. Responses to this effect are summerised in Table 16.

The main area of dissatisfaction of the workers related to the honorarium.

### DISCUSSION

The scheme was introduced in October, 1975 with the opening of 27 instead of the full strength of 100 anganwadis. The targetted number could only be achieved by June, 1977. This indicates lack of full preparation on the part of the sponsoring authority to introduce the scheme in the project area at a time in spite of the monetary input.

Though the scheme was to be launched in 100 anganwadis at one time, this could be achieved only in a phased manner. This resulted in functioning

## TABLE 16 PERCENTAGE DISTRIBUTION OF WORKERS ACCORDING TO THEIR PERSONAL PROBLEMS

	Percentage of workers
1. Honorarium	
Satisfied	3 <b>2</b> 7 2 1 3 3 4 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5
Not fully-satisfied	[12] [13] <b>(6</b> ] (2) (12] (12] (12] (12] (12] (12] (12] (12]
Not satisfied	92
2. Travelling from residence to Anganwadi	
Satisfied	84
Not satisfied	16
3. Getting leave	
No difficulty	- 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1
Difficulty	22
4. Working Space	
Adequate	80
Not adequate	20

of the various anganwadis in the same project area at different point of time. Consequently, the base line data of the different anganwadis is not comparable. Further different time span of service of anganwadis has affected the liaison with the community and has a bearing on the coverage and frequency of services provided.

Regarding the criteria of educational qualifications 20 per cent of the anganwadi workers were much more qualified than envisaged under the scheme. This higher qualification may be one of the factors responsible for the frustration amongst the workers with regard to the nature of the duties expected and the quantum of honorarium paid to them. Besides, 23 per cent of the workers were serving communities other than they belonged to and another 36 per cent were not residing in the same area. Further, the presence of 6 per cent of the workers not fulfilling the essential qualifications added to the frustration of the others. Perhaps some specific considerations and unwillingness/non-availability of the right type of the female candidates for the job were the reasons of this selection. All these factors are of far-reaching consequences as far as functioning of the project is concerned, particularly in the context of its being monitored for further extension to other areas.

It was interesting to note that there was no statistically significant difference in the level of knowledge and understanding between the anganwadi workers having formal training and those untrained. It implies that on the job training given to the untrained workers and their own initiative to learn has made up the gap. It reflects upon the utility of formal training imparted to the workers at the balsevika training school. This is an area which needs proper thinking and planning to bring about changes in curricula and the duration of the formal training at the policy planning level.

The type and frequency of health services stipulated under the scheme have not been fully achieved. The quality of health services rendered has also been affected in various ways; viz., low range frequency of services pertaining to health check-up; supplementary nutrition and referral in the absence of grading of all the children; the clientele not being fully protected by immunisations by administering the required doses; the progress of expectant and nursing mothers not continuously observed due to lack of regular check-ups, etc.

The factors responsible for this are: non-adherence of health staff to fixed programme of visits; location of anganwadis in congested and unacceptable areas; and availability of health care services through two hospitals in the vicinity. Of these, in respect of the latter two factors, no immediate solution is possible. However, the coverage of the population could be considerably improved provided the health staff adheres to their fixed and appointed schedule of visits to anganwadis. This would save the anganwadi workers from embarrassment caused to them by non-availability of health staff when they have already collected the children and expectant and nursing mothers for the services. This works as a bottleneck for them in subsequent occasions to collect the clientele for the services. As such there is a need to have a close coordination between the health staff and the anganwadi workers. The prevailing field situation also reflects upon the supervision at different levels which seems to be unplanned.

Only 20.9 per cent of the available time was spent on the activities related to health while 24.9 per cent time was spent on non-productive work. There was a scope for diverting 17 per cent (i.e., idle, late and absent) of available time to health activities by way of better supervision and by introducing proper motivation amongst the workers.

The involvement of the anganwadi workers in the activities like preparing the anganwadi, record-keeping and preparation, and service of supplementary nutrition and procurement of supplies, also leaves the workers with less time for other productive activity. Increased participation of the local community in the management of anganwadis and the simplification of the record system may further help the workers to devote more time on health activities.

The perception, utilisation, satisfaction and participation of the non-beneficiaries was low as they were not given complete knowledge about the scheme, its services and benefits through regular contacts by the workers and other staff. There has been a tendency among the anganwadi workers to visit beneficiaries more often than non-beneficiaries. Increased contacts with non-beneficiaries would be much more fruitful to achieve the desired results.

The operational problems, particularly in relation to the service component of the health services, are mainly because of lack of coordination and understanding between the anganwadi workers and the health staff. Most of these problems could be managed. As far as personal problems are concerned, except for honoraria, the percentage of response in other areas is not high.

### SUGGESTIONS

It would be desirable to launch the scheme in a project area in its full strength and the criteria of selection of workers may be strictly adhered to. There is a need to revise the training curricula designed for the workers so as to make it more job-oriented. Strengthening of supervision, reorganisation of procedures and methods and increased participation of the community would release more time to the workers for the productive activities. Above all, coordination among the various functionaries of the scheme could be further streamlined.

### UNICEF

The United Nations Children's Fund (UNICEF) is that part of the United Nations system with a special mandate to concern itself with the children of the world. UNICEF is active in more than 100 countries in Asia, Africa and Latin America that have a total child population (under 16 years of age) of 865 million. It is helping governments to develop their human resources—their children—through projects in health, nutrition, education, water supply and family and child welfare. This is a far cry from 1946, when UNICEF was created by the General Assembly to help the children of war-torn Europe.

During the 1949-73 period the value of assistance committed by UNICEF to India amounted to \$119 million. During the Fifth Plan period (1974-79) UNICEF expects to spend \$56.8 million.

India is a member of UNICEF's 30-nation Executive Board and has contributed to UNICEF's global resources since 1949. India pledged \$1.21 million to UNICEF for 1976.

In addition, during 1975-76, Indians bought 1.3 million UNICEF greeting cards and 6,350 calendars with gross proceeds adding up to Rs. 2.1 million (\$236,506) placing India first in sales in Asia. These funds are used to purchase equipment in India, provide stipends for training programmes and for administrative costs.

# Some Issues and Problems in Child Welfare Evaluation from the Policymaking Perspective\*

### Arie Halachmi

CHILDREN ARE the most valuable asset of any society. In some cases, child rearing is the reason détre for bringing a group of people together to form and to maintain a particular social order. However, in all the cases, the future survival of any member of society is dependent on the role children play as grownups. The child who is the infant of one may be the one who provides food and shelter some years later not only to his parents or care takers but to many other members of their respective charts. Thus as one generation replaces another as the backbone of the economic activities and societal services, care takers change roles. From the support and protection of children they themselves become dependent in their old age on these children as adults.

The relationship between child care and old aged care is a spiral relation.<sup>1</sup> The quality and adequacy of child care determines how well one would function as an adult, and, therefore, how well he would take care of those that took care of him, and of his own young ones—those that would take care of him, in his old age as well as of his grandchildren, and so on. This spiral relation does not imply that child care is determental to the future of a particular family. Rather, it expresses the general responsibility of society with regard to children's welfare as a function of its possible influence on practices of child rearing which, in turn, influence the general welfare and the survival of that society. The spiral relation in this case suggests an intensifying and self-perpetuating process where inadequate practices generate more inadequacy while improved practices result in a higher level of welfare. Also, the spiral relation suggests that an existing pattern of child rearing cannot change course by itself. In other words, there is a need for external intervention to influence a change in this process.

Because of the spiral relations between child care and societal develop-

<sup>\*</sup> The topic dealt within this paper should have been the starting point of our discussion in this Number. But, since the paper was received late, we are fixing it here—Ed.

<sup>&</sup>lt;sup>1</sup>The possible use and the nature of the spiral relation in describing social policymaking was discussed in Arie Halachmi's "From Descriptive, Explanatory and Prescriptive Views of Policy Analysis to a Spiral Perspective," *Indian Journal of Public Administration*, 24(4), October-December 1978, pp. 957-972.

ment, the study of children's welfare and the possible ways to intervene in order to improve it should be a focal point of public policy making. Any attempt to overlook the implications of public policy on the welfare of children amounts to a short sighted approach that disregards the future. Yet, the study of the different ways to promote children's welfare is not an easy task. Even the most conscious effort to enhance the welfare of children cannot guarantee the desired influence as the future welfare of society. The reason is that children's welfare consists of so many facets that there is no single measurement that can express its status (or changes in it) accurately. For example, the success of efforts to improve children's nutrition is not sufficient evidence of cognitive or mental development, proper housing does not guarantee a desired pattern of family relations, and the availability of pediatric services does not imply adequate maternal care.

The inability to use a single direct measurement of welfare suggests the need to develop a series of partial indicators. These should provide policy-makers with a reliable approximation of changes in the status of children's welfare.

The purpose of this paper is to address selected aspects and problems of evaluating children's welfare. The paper starts with a suggestion to design such evaluations to assess public efforts (that are expressed by public policies and programmes) rather than the direct changes in certain measurements of children's welfare. The paper suggests some of the possible criteria that can be used for that purpose. It examines the ideological and economic rationales for the state intervention to influence welfare and the special significance of the proposition to use the criterion of availability as an important one. The paper concludes with a series of comments on two epistemological problems in the evaluation of children's welfare. It suggests to use the home rather than the family as a focal frame of reference. And, to include in the assessed efforts to influence welfare of children all the policies that seem to influence child abuse.

### CHILDREN'S WELFARE: EFFORTS VS. RESULTS

Welfare is a concept that deals with the wellbeing of individuals in society. Therefore, its exact content changes from place to place. Because of the difficulty to measure welfare directly we need to use indirect or secondary measures of welfare. The underlining assumption here is that welfare results in (or is dependent on) planned activities of the state. A state is a welfare state if it recognises its responsibility to engage in those activities that are likely to assure a certain minimum of social and economic conditions of security for all its citizens. For that reason one of the secondary (and indirect) measures of welfare can be a measure of the state's effort in creating the desired conditions. When these conditions do not exist and/or when we cannot identify a state's effort to create them we may assume that the state is not a welfare state.

The emphasis on the efforts to create necessary conditions, rather than on their actual results—i.e., the level of welfare that is obtained underlines my assertion that a realistic evaluation of welfare must give due consideration to the special context and the different constraints on government's action in each case. This assertion is particularly relevant to the case of children's welfare. Here, the emphasis on assessment of efforts implies that good nutrition, healthy environment and proper intellectual and emotional development may result because of many reasons other than the state's intervention. To characterise children's welfare as a direct product of state's policies is to write off the natural talents, instincts, traditions and skills of individual parents for the sake of a doctrine that identifies welfare (and the welfare state) with totalitarian approach. The position taken here and by other writers is that the responsibility of the state is to assist families and parents to carry out their roles but not to replace them.<sup>2</sup>

A non-totalitarian approach to welfare suggests that evaluation of public policies should be done by reference to the government's efforts to elevate the status of children—to create the necessary conditions—and not by a measure of actual results. For reference to results may indicate more of the state of art and the availability of resources than on the commitment of the government to this issue. It may indicate how severe the constraints, under which action takes place, are but very little on how optimal this action is under the given constraints. Such an approach may yield to the temptation to make the invalid comparison of children's welfare in different states regardless of such factors as rate of population growth, urbanisation, per capita income, etc. This point deserves some further discussion. The status of children's welfare at any time does not reveal the adequacy of the state's policies. Adverse findings by themselves imply less than a satisfactory situation. However, such findings may mask the fact that the bad situation in the present represents an improvement in comparison to a worse situation in the past.

The evaluation of the effort rather than the desirability of the existing status of children acknowledges the existence of constraints on government action. It maintains the demand for rationality and accountability of public officials, while resisting the temptation to make a goal out of the concept of welfare which, in turn, may justify the use of totalitarian means. This paper accepts the existence of a social order and economic conditions as given and searches for ways by which to increase the effectiveness of existing policies. In comparison, an approach that concentrates on the *result* rather than the *effort* may easily end up with the shocking conclusion that child rearing is too important to be left to the parents and hence with a totalitarian notion of welfare.

<sup>2</sup>This point is emphasised in *Toward a National Policy for Children and Families*. Report of the Advisory Committee on Child Development Assembly of Behavioural and Social Sciences, National Research Council, National Academy of Sciences, Washington, D.C., 1976. See for example, pp. 65, 77, 90.

### **EVALUATION CRITERIA**

Evaluation of public efforts to influence the welfare of children is an attempt to assess what is being done, how well it is done and what else can or should be done. Due to the complexity of these public efforts and their mixed (and often unclear) results, this assessment must rely on a series of criteria. Each of these criteria provides a partial answer by ascertaining the actual level or quality of selected aspects of these efforts. A comprehensive assessment necessitates the use of an elaborate set of criteria. However, a limited evaluation—one that can be carried out within a relatively short period of time in order to provide decision-makers with policy related input of information—can be based on a few selected criteria. In each case, the availability of resources, and the policy question (or agenda) would influence the number and sort of criteria that would be used to ascertain the level of the relevant efforts. However, there are certain criteria that ought to be used in each evaluation. These criteria include:

- 1. Availability: This criterion determines what services, assistance and support are available to parents as indicated by two independent measures:
  - (a) Affordability: How many families can afford to use the available services, assistance or support for child rearing?
  - (h) Scope: What sort of services are available (e.g., educational, medical, social work, etc.)? How much of the country is covered by the same set of related programmes or to what extent some services are limited only to urban areas or to communities above a certain size? What age groups are eligible to enjoy different services (e.g., are services limited only to school or to pre-school ages, etc.)?
- 2. Effectiveness: Are there long lasting and significant changes in the conditions of children that can be attributed directly to services, assistance or support provided by public policies? Are there long lasting and significant changes in the ability of parents to carry out their parental roles in a more comprehensive and successful manner? A follow-through procedure to monitor the result and to collect the necessary data to answer these questions is a precondition for using this criterion to determine to what extent the existing efforts are real or whether they are symbolic and nominal; whether they are adequate and sufficient given the general socio-economic profile of the population and the nature of local constraints.
- 3. Efficiency: This criterion examines the political economy of the efforts to answer such questions as: Are services provided in a way that secure approval and support of their recipients? Is there adequate

- manpower and organisation to carry out the different programmes? Is there enough flexibility to allow variation in response to different needs in various parts of the country or for various segments of the public? Are there provisions to allow maximum participation of parents in the planning and implementation of the different programmes? Is it possible to increase the effectiveness of public effort significantly by a marginal decrease in their efficiency (or vice versa)?
- 4. Contextuality: This criterion examines the existing efforts within the given socio-economic and political context. It ascertains the quality of public efforts to influence children's welfare by asking questions like: what are the mechanisms to coordinate different policies that may influence children's welfare? How well do these mechanisms function? How consistent are the different efforts with one another at the present, with past efforts or with those efforts that are planned for the future? For example, application of this criterion may raise the question about the possibility that the availability of non-expensive child care services is a negative incentive and a contradiction to state's other efforts to encourage family planning.

Since I have discussed the last three criteria elsewhere,<sup>3</sup> I would like to concentrate here on the use of the availability of services and support as a major criterion in the evaluation of children's welfare.

### AVAILABILITY OF SUPPORT AND SERVICES FOR CHILD CARE

The assertion that wider the availability of services, support or assistance the better, is true only if there is an agreement about a specific value position. This position can be stated as follows: All children are eligible to the same opportunities regardless of the socio-economic status of their parents. The value that is supported by this position is egalitarianism. All newborns are equal. According to this value position the extent to which parents made it economically and socially is irrelevant to the child's future because social and economic status is not (or should not) be an inherited virtue. Rather, they should result from talent and hard work of the individual himself.

This value position has several important implications for the general direction, implementation and evaluation of policies concerning the welfare of children. First, this position implies that the state has a role (if not a duty) in compensating children for deficiencies resulting from the socio-economic status of their parents. The responsibility of the state to secure the same opportunities to each child suggests a possible measure by which to assess availability. This measure is based on the assessment of the gap between the

<sup>&</sup>lt;sup>8</sup>Arie Halachmi, "The Use of Policy Evaluation in Policymaking," *Indian Journal of Public Administration*, 23(4), 1977, pp. 1035-1052.

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level of the necessary conditions for physical and mental development in the case of children from high income families in a given state to those of low income families in the same state. Such conditions include (but are not limited to): housing, nutrition, educational stimulation, medical care, stability of the family unit, etc. Availability goes up as the state moves in to supplement, remedy or provide solutions for more deficient conditions, *i.e.*, those adverse or insufficient conditions that may interfere with the ability of a child from a low income family to fully develop his potential in comparison with a child that is born to a wealthy family.

The existing body of knowledge on planned intervention in child rearing and particularly concerning the effects of different arrangements of day-care on the intellectual development of pre-school children provides an excellent case in point to illustrate the possible role of the state in assuming equal opportunities through planned intervention.<sup>4</sup> The ideological rationales for the state's involvement in child care may differ from place to place and from time to time. However, as pointed out by Kathleen Dunlop, there are three general orientations that characterise them: reactive-maintenance, reform, and proactive revolutionary orientations.<sup>5</sup>

The reactive-maintenance oriented rationales include, according to Dunlop, responses to needs created by war; responses to needs created by economic crises; and responses to the needs of children in crisis.<sup>6</sup> Reform oriented rationales can fall into six sub-categories: responses to social trends; enhancing child development; enhancing parental competence; providing support to families; supporting equal opportunities for women and community development.<sup>7</sup> Rationales oriented toward radical reform or revolution emphasise the needs of society rather than the needs of the child. As Dunlop puts it:

These rationales are thus distinguished from those in the maintenanceoriented category, where responses to change are manifested in an attempt

<sup>4</sup>Recent reviews include for example Jay Belsky and Laurence D. Steinberg "The Effects of Day Care: A Critical Review," *Child Development*, 49 (December) 1978, pp. 929-949; and Louise Barnes and Kathleen H. Dunlop, *The Effects of Day Care: Empirical Evidence*, Vanderbilt Institute for Public Policy Studies (mimeo), Nashville, June 1979. A summary and a special reference to the American experience of government intervention in child care can be found in two Congressional reports, *Child Care and Preschool: Options for Federal Support*, Congressional Budget Office, Washington, D.C., September 1978 and *Early Childhood and Family Development Programs Improve the Quality of Life for Low-Income Families*, by the Comptroller General, General Accounting Office, Washington, D.C., February 1979.

<sup>5</sup>Kathleen H. Dunlop, Rationales for Governmental Intervention into Child Care and Parent Education, Vanderbilt Institute for Public Policy Studies (mimeo.), Nashville, October 1978, pp. 2-3.

<sup>6</sup> Ibid., p. 4.

<sup>&</sup>lt;sup>7</sup>*Ibid.*, p. 14.

to restore a pre-established social order. They are also distinguished from rationales in the reform-oriented category, where governmental orientation is generally focused on incremental social change.<sup>8</sup>

The economic rationale for the government's intervention in child care and development is not independent from the ideological rationales. Thus. there are contradictory claims about the inexistence of economic rationale for public policies and state intervention in practices of child care. For example, a 1978 study by the U.S. Congress pointed out that availability of day-care is not a factor of primary significance for a substantial number of women seeking employment.9 Thus, a state intervention in day-care services cannot be considered as a way by which to influence the labour market or the economy. On the other hand there are other reports that emphasise the economic wisdom of the investment in children from low income families because such investment may lead to probable savings later on, e.g., remedial teaching, probation and law enforcement services, and finally on financial support of such children as they grow and have families of their own. A 1977 analysis by Irving Lazar of data from 14 studies of low income children who participated in experimental infant and pre-school programmes prior to 1969 provides important evidence. The Lazar study points out that children participating in early developmental programmes were held back in grade or required special education less often than control groups, and scored consistently higher on intelligence tests. 10 About the same time that the Lazar study was published the Comptroller General submitted his report on learning disabilities to the U.S. Congress. In this report the Comptroller General points out that out of 129 juveniles that were tested. 128 were found to be functioning below the corresponding grade level. In 1979 the Comptroller General issued another report. The 1979 report on early childhood and family development programmes provides more evidence about the possible link of the above findings with other data of education and criminal behaviour by reference to educational deficiencies of adult prisoners.12

Another economic rationale that justifies government intervention to assure appropriate conditions for child development points to the interest of every state to cultivate its human resources. Here government intervention, and particularly in the case of children from low income families, is considered

<sup>9</sup>Child Care and Preschool (1978), op. cit., p. xi.

<sup>12</sup>Early Childhood and Family Development Programs (1979), op. cit., p. 27.

<sup>&</sup>lt;sup>8</sup>Kathleen H. Dunlop, op. cit., p. 40.

<sup>&</sup>lt;sup>10</sup>Irving Lazar, *The Persistence of Preschool Effects*, Education Commission of the States, September 1977.

<sup>&</sup>lt;sup>11</sup>Irving Lazar, Learning Disabilities: The Link to Delinquency Should Be Determined But Schools Should do More Now, a report by the Comptroller General, General Accounting Office, Washington, D.C., March 1977.

to be an important factor that influences the odds that children would mature to become productive adults that contribute to society, rather than a societal liability. The chart on next page graphically summarises the evidence that was found by the Comptroller General to support the claim that results from this rationale, namely, that: "the quality of the environment experienced by the developing child during the prenatal and early childhood periods of life has important long-term consequences."<sup>13</sup>

#### EARLY CHILDHOOD DEVELOPMENT AND THE CRITERION OF AVAILABILITY

Benjamin Bloom—one of the leading authorities on child development—wrote in 1964 that 50 per cent of intelligence measurable at age 17 is developed by the time a child is age 4.<sup>14</sup> Speaking about the influence of the child's early environment on his intellectual development Bloom says:

A conservative estimate of the effect of extreme environments on intelligence is about 20 points. This could mean the difference between a life in an institution for the feeble-minded or a productive life in society. It could mean the difference between a professional career and an occupation which is at the semi-skilled or unskilled level. 15

This claim about the potential effectiveness of early educational intervention on the intellectual development of children—and particularly in the case of the so-called 'high risk children'—is made repeatedly by several writers. To For our purpose here, this claim suggests an important guideline and an economic rationale for public efforts to facilitate better environments of children from low income families. Because there is a higher likelihood of the existence of adverse conditions and an 'extreme environment' in the case of low income families, higher is the likelihood that an addition of 20 IQ points would result in the critical differences that are claimed by Bloom. For that reason, the economic returns on the public investment in early intervention may be bigger than an investment in later efforts to improve children's welfare.

From the previous discussion it seems that the criterion of availability implies the use of those measurements of public effort that indicate the extent

<sup>&</sup>lt;sup>13</sup>Early Childhood and Family Development Programs, (1979), op. cit., p. 28.

<sup>&</sup>lt;sup>14</sup>Benjamin S. Bloom, *Compensatory Education for Cultural Deprivation*, Holt, Rinehart and Winston, New York, 1965, p. 88.

<sup>&</sup>lt;sup>15</sup>Quoted in Early Childhood and Family Development Programs (1979), op. cit., p. 12.

<sup>16</sup>See Irving Lazar (1977) op. cit., Jay Belsky and Laurence D. Steinberg (1978), op. cit., and the Barnes-Dunlop report (1979), op. cit. The educational intervention may include parent or family involvement and education as possible strategies to increase the effectiveness of such efforts. See for example Urie Bronfenbrenner, "Is Early Intervention Effective?" in Marcia Guttentag and Elmer L. Struening (eds.), Handbook of Evaluation Research, Volume 2, Sage, 1975, p. 531.

HIGHER RISK OF LOW-INCOME SINGLE-PARENTHOOD NEGATIVE CYCLE IS REINITIATED SPECIAL EDUCATION JOB TRAINING PROGRAMS CRIMINAL REHABILITATION EXPENSIVE REHABILITATION EFFORTS WELFARE DEPENDENCY POSITIVE EMOTIONAL DEVELOPMENT GOOD SCHOOL ACHIEVEMENT SCHOOL YEARS AGE 5 TO 17 POOR SCHOOL ACHIEVEMENT I SUMMARY OF THE EFFECTS OF PRE NATAL AND EARLY CHILDHOOD ENVIRONMENT ON HUMAN DEVELOPMENT JUVENILE AND ADULT CRIME GOOD EARLY VEHIOLOGO ENVIRONNENT PROVIDED BY
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to which the existence (or improvement) of the necessary conditions for early childhood development can be attributed to the government's intervention. In this context it seems that a comparison of the different conditions in the environment where children from low income grow, with the conditions under which children from high income families grow, may be instrumental for assessing availability and adequacy of the various government efforts. Such a comparison is very useful for purposes of policy making because it is not based on artificial assumptions. By comparing the most favourable conditions for child development as they exist for children from wealthy or average families, with the situation of children from low income families, policy makers can find out what can be achieved in the state under given circumstances. On the basis of this information, they can study different alternatives and decide what effort should be made to allow all the children to enjoy these favourable conditions.

Such a comparison may reduce the risk that inappropriate or artificial standards would be used in the policy making process. For example, such a risk may result from an indiscriminate reference to welfare indicators from wealthy or western countries by policy makers from poor or developing states.

### EPISTEMOLOGICAL PROBLEMS IN THE EVALUATION OF CHILDREN'S WELFARE

For purposes of policy analysis, the study of the state's efforts to influence the environment surrounding children raises two epistemological questions:

- 1. What is the proper unit for reference in order to assess the impact of the state's intervention?
- 2. What is the selection criterion by which to decide what policies (activities) to include in the assessment of public efforts to influence the welfare of children?

Each of these two questions deserves a lengthy discussion that is beyond the scope of this paper. Nevertheless, I would like to make a few remarks in the hope of contributing to and stimulating further discussion and research about them.

Much of the present discussion on the welfare of children entertains the implicit assumption that welfare must be defined by reference to the societal context. For example, where availability of day-care services is considered a measure of a child's welfare, the rationale for them is based on arguments about the societal benefits from a possible development of the child or the need (who's need?) to help families in distress.<sup>17</sup> While these arguments should not be ignored, it is important to bear in mind that some of them have

<sup>&</sup>lt;sup>17</sup>See for example Toward a National Policy (1976), op. cit., p. 77.

to do more with the interests of social do-gooders, reformers, or even the selfish interests of parents, than with the true interests of the child and his objective welfare (if such one can be defined). The child's interest—as a child—cannot be defined as a function of the interests of somebody else. Even the individual's interests as an adult cannot be always used to define his best interests while he is still a child.

The uneasy task of finding out what is the genuine interest of the child—as a child—and the difficulty of dealing with the possible discrepancies between this interest and what others claim to be in his best interest is dodged in several ways. One way is the heavy emphasis of parental approval as an indication that the public effort is indeed in the best interest of the child, e.g., parental support of day-care programmes is taken as a proof that a child's welfare is enhanced. Here the hidden assumption is that parental interest must be absolutely consistent with the best interests of their children. Unfortunately the literature does not provide enough evidence to support the claim that in all cases parents would compromise on their interests for the sake of the child's interest. This point can be illustrated by reference to the numerous cases where a child was denied certain medical treatment because such treatment was against the beliefs of his parents. 19

Because of all these cases, parental approval or disapproval of public efforts cannot be used as a sole or primary indicator in the assessment of children's welfare. The use of a simple survey research or observations of parental attitudes cannot establish what the real motives behind parental support or opposition to different efforts by the state are. Therefore, the common practice to utilise this method in order to assess the welfare of children is misleading. However, parental attitudes should be considered as an important factor that may influence the political feasibility of different programmes and their ultimate impact. This point can be further illustrated by pointing to the numerous cases of disagreements between parents and teachers or school boards on certain parts of the curriculum (e.g., sex education, evolution theory), the kind of school, or the location of the school a child should attend. All these disagreements are justified and rationalised by the claim to serve the best interest of a child. Yet, as we all know, the 'professional considerations' and the 'parental responsibilities' that each side requests to use in order to decide what is best for the child are not free from other interests of the parents or the school authorities and have little to do with the objective welfare of the child.

<sup>18</sup>The Comptroller General, for example, uses parental approval as an indication of programme quality. The Comptroller does not cite any methodological control for the possibility that parents used the desired social norms (or their image of it) as their reason for support of such programs. See Early Childhood and Family Development Programs, op. cit., pp. 39-40, 72.

<sup>&</sup>lt;sup>19</sup>For a recent example see "Who Speaks for the Child," *Newsweek*, September 3, 1979, p. 49.

Another example of an attempt to diffuse the possible discrepancy between the child's true interest and the interests others have for him can be found in the call to make the family the relevant unit of study and the vehicle by which to influence children's welfare. This call dominates much of the recent writings in America. A case in point is a report titled 'All Our Children: The American Family Under Pressure' 1977.20 The report argues the case for government intervention for the sake of children's welfare. However, the proposed target is to influence the conditions of the family, not of the child's home. The use of the latter implies the need for a more comprehensive and complex approach, and it challenges the appropriateness of disciplinary (as opposed to interdisciplinary) knowledge in the social sciences for policy making. The temptation to suggest the family as a focal unit for policy making results from traditional approaches to disciplinary research in the social sciences that take the family as a primary unit for study. Because of this influence, study of the web of interactions within the family; social forces outside of it and the influence of the physical surroundings as sources for a joint influence on the development of the child is still missing. To illustrate this point let me point out that even though all these factors influence the dynamics of the environment—where the child grows before he goes to a day-care centre and often he returns from it-most of the research on day-care does not control for them. Undoubtedly, the reference to the family as a focal concept offers a more compact concept for purposes of research and discussions than the concept of 'home'. However, the true interest of the child may be served better with the growth of our understanding and influence on those conditions that exist at the child's home as a more comprehensive frame of reference than the family. For example, in extreme cases we may conclude that the true interest of a child necessitates to provide him with a new home even though this may not be the optimal solution when the family is the unit of reference. The Advisory Committee on Child Development has treated this issue in a similar fashion. The Committee criticises the tendency to ignore broad institutional contexts or to define them as sociological givens, rather than as structural elements that can be modified.21

To summarise my comments on this point let me say that I suggest to use the 'home' as a basic unit for reference when assessing children's welfare. The home for that purpose is the total environment that surrounds the child in his native habitat.<sup>22</sup> In different places this environment may include different components. For example, where the extended family live together, home includes the daily inter-actions between and within the various generations of

<sup>&</sup>lt;sup>20</sup>Kenneth Keniston and the Carnegie Council on Children, *All Our Children: The American Family Under Pressure*, Brace and Jovanovich, New York and London, 1977.

<sup>&</sup>lt;sup>21</sup>Toward a National Policy (1976), op. cit., p. 100. Similar concern is expressed also in Belsky and Steinberg (1978), op. cit., p. 930.

<sup>&</sup>lt;sup>22</sup>The Advisory Committee on Child Development speaks about "the actual environments in which children live and grow," cf. *Ibid.*, p. 102.

the family. For such inter-actions are an essential part of the environment that stimulates the child and influences his development. In other places, the home of a child from a single parent family may include the programmes that are available on the local television and the pattern of social life led by the single parent.

By reference to the home as the total environment where the child grows a meaningful measure of the availability of services involves a measure of adequacy. For, if the available services are not adequate for influencing the conglomerate situation under which the child develops, it is not possible to use them in order to assess the welfare of children. This brings up a few comments I would like to make concerning the relevant criteria for reference to different public policies as relevant efforts to influence the welfare of children.

The difficulty to assess public efforts to influence the welfare of children results from the fact that many of these efforts are not meant, initially or primarily, to have an effect in that area. One of the common examples is the case of subsidised day-care centres. While this effort may influence the welfare of children it may be a part of policies to get more housewives to make themselves available when demand exceeds supply in the labour market, as part of the policies to rehabilitate families<sup>23</sup> or as an attempt to create new jobs.

Many public policies influence the welfare of children indirectly and unintentionally. For example, policies that influence employment, housing, the sale of alcohol over the counter or prescription drugs, etc., influence eventually the conditions at the child's home and thus his welfare.

One of the possible criteria for selecting public policies for the evaluation of children's welfare has to do with the measurement of child abuse. If the trade offs between children's welfare and child abuse forms a zero sum situation, any measured increase in one indicates a decrease in the other. Hence, any public policy that influences any form of child abuse becomes a relevant policy for the assessment of public efforts to influence children's welfare. Local differences in defining child abuse or its different levels are likely to influence inclusion (or exclusion) of policies in this evaluation. However, since the values, traditions or customs that influence the definition of child abuse are likely to influence also the different definitions of children's welfare, this criterion seems to be a very promising one.

<sup>&</sup>lt;sup>23</sup>See Dunlop (1978), op. cit., pp. 29f and Early Childhood and Family Development Programs (1979), op. cit., p. 73.

# **Overseas Survey**

# Children in England

### Andrew Kakabadse

THIS YEAR has been designated the International Year of the Child. From a child's point of view how is that different to any other year? The answer is probably no different, but at least in the minds of adults, children have earned some, if not sufficient, respect in that they are viewed as human beings with their own needs and rights. It is not sufficient that their rights be acknowledged but further acted upon to improve their position in society.

When opening a newspaper or switching on the television, people in Britain are fairly regularly reminded that this is the International Year of the Child, and consequently, should give generously to a particular charity for children or some needy cause attempting to combat certain traumas some children are having to face. Although socially worthwhile, private donations for single problems are not the real bread and butter issues concerning the care of children in any country. The real issues centre around problems such as juvenile delinquency, the degree of state involvement in the family, the removal of children from family care into the care of the state, the adoption and fostering of children and the long term education and development of children. Each country has developed particular points of view, which are practised as services offered to the community; some services being mandatory and others at the discretion of public servants. This paper describes the present legal position of children in Britain and discusses the critical issues facing British society.

### LEGAL HISTORY OF CHILDREN

Historically, common law had acknowledged the special status of children before the courts in two ways:

- Those below the age of seven; these children were seen as incapable of forming criminal intent and hence could not be tried for a felony or misdemeanour.
- 2. Between the ages of seven and fourteen, by the doctrine of doli incapax, the onus was placed on the prosecution to prove that the child appreciated the wrongfulness of its behaviour.

Beyond these age groups, few concessions were made to children, either by way of procedure, or in the practice of sentencing for a crime. Children were liable to imprisonment, transportation to the colonies or hanging alongside their adult elders.

By the early 1800s the legal position of children was beginning to change with the introduction of the Factory Acts, which concentrated on improving working conditions for both minors and adults in the newly formed worker factories of the Industrial Revolution. From this activity came a slow and tenuous understanding that children are a group that have to be treated apart from other human beings. A century later, women came under similar scrutiny to determine their own rights in society; a process which all of us are currently experiencing. The understanding that children were a special group crystallised opinions into two important and distinct elements:

(a) concerning physical abuse; and (b) concerning moral contamination.

Physical abuse was relatively easily dealt with in the 19th century by legal prescription and regulation of parents' and employers' treatment to children. Moral development and contamination, however, was and is, a far more difficult matter that has led, and is currently leading, to heated argument. On the positive side, laws were passed that enforced the child to be exposed to the 'wholesome' influences of education. On the negative side, a revulsion grew from the condition of unreformed prisons in which children were kept in custody, and the consequent influences upon their person. It was quite obvious that those children who benefited from education were not the same ones or came from the same social grouping as those who suffered prison sentences.

Consequently, the reform movement of the 19th century concentrated in two areas. First, providing residential social care of a better standard than that provided by the state. This comprised of free day schools for all children; day industrial schools for the neglected and residential reformatories for those criminally corrected. These last two provisions were to be financed partly by parental contribution. Second, attention was focused on the law, in order to reform the position of children in court. From 1847 onwards, the powers of the courts to send children to prison had been progressively eroded. Coupled with this was the realisation that children required their own courts. Public appearance in the dock could brand a child as a criminal let alone the influence that hardened criminals who were appearing on the same day may have had on that child. Hence the operation of the law itself was recognised as a contaminating influence.

#### Children's Act 1908

The combination of activity of developing suitable residential accommodation and attempting to reform the law, led to the Children's Act 1908 which introduced two fundamental departures from pre-existing criminal law. First, it introduced privacy by barring public access to juvenile proceedings.

Second, the thinking behind the age-base of criminal jurisdiction was altered in the context of which separate private and simplified hearings might apply. There was no move to raise the age of criminal responsibility from seven years old, but rather it sought to establish a period during which children would be shielded from the full consequences of what they had done even though they may have acted with criminal intent. The Act set the upper limit of protection from the full weight of the law for punishment to sixteen years of age. Even though a young offender may well have been subject to the criminal law, the nine years from seven to sixteen years of age can be identified as a form of moral and social quarantine.

Fundamentally, the 1908 Act was a substantial breakthrough. It gave impetus to the process which had first begun with the Factory Acts and converged the activities of reformers concentrating both on the law and social welfare. Under this Act, the courts emerged as a type of child welfare agency deciding on the best possible courses of action within the age structure set. Children were attributed special status in that their cases were not only held 'in camera'\* but were also separated from adult criminals.

## Children's Act 1933

The next major step forward came with the Children's Act 1933. The industrial schools and reformatory systems that had begun in the mid 1800s came under scrutiny and a report produced by the Parliamentary Committee on Young Offenders 1927 concluded that there was little or no difference in the character and needs of neglected and delinquent children. Some of the recommendations of the report were accepted in the Children's Act 1933. A new pattern of thinking emerged, that of 'children in trouble', and this new thinking remained virtually unchanged for the next forty years. Three distinct elements were offered under the Act, those of crime, care and truancy.

In terms of crime, juvenile court proceedings were separated physically from adult courts, or were time-tabled to avoid any possibility of overlap between the two clienteles. Special magistrates were chosen to man the juvenile panel; simplified procedures were adopted; the public were excluded from the room and the press forbidden to publish names. Even the words 'conviction' and 'sentence' were no longer to be used in relation to juvenile offenders. However the juvenile courts had most of the penalties of adult courts other than imprisonment. Probation officers were used extensively and troublesome children were committed to reformatories and later to approved schools. These were still managed by voluntary bodies which had created and maintained them from the 1830s onwards. Apart from the two basic differences of procedure and sentencing, juvenile courts were areas of criminal jurisdiction.

The attitudes taken towards child care and truancy were quite different to

<sup>\*</sup> Legally 'in camera' means, in private.

those concerning juvenile offences. According to the 1933 Act, a child in need of care and protection is, 'one who having no parent or guardian or a parent or guardian unfit to exercise care and guardianship not exercising proper care and guardianship is either falling into bad associations, or exposed to moral danger or beyond control.' A further list specifies children who are the subject of sexual and/or violent offences or who have lived in households where these offences have been committed.

Due to the imprecise nature of the care definition, legal practice over the preceding years showed far fewer care proceedings and a far greater number of criminal cases being brought before the courts. Quite the opposite situation was developing in the U.S.A. Far more precise definitions of social care and guardianship were specified in America as opposed to the broader and more legalistic approach of the British. In the U.K. care proceedings were really successfully applied only in cases of children facing moral danger or physical abuse. Such situations were both sufficiently traumatic to the child and dramatic in terms of behaviour in the community to be able to quickly prove to the court the removal of the child from the home situation.

# Children and Young Persons Act 1963

By the mid 1950s there was a growing concern in England that far more juvenile criminals and fewer care proceedings were being brought before the juvenile courts. The Ingleby Committee was appointed in October 1956, with wide terms of reference which allowed it to examine some of these contradictions. The Committee reported in 1960 and isolated the problem of inconsistent and ambiguous behaviour in jurisdiction. On the one hand, juvenile courts sat as courts of criminal jurisdiction, trying cases according to the rules of evidence, and on the other having due regard to the welfare of the child. The report begged the question as to how the two principles could be reconciled: criminal responsibility is focused on an allegation about some particular act isolated from the character and needs of the defendent, whereas welfare depends on complex personal, family and social considerations. The solution to the problem would have been to abolish criminal proceedings altogether and view offences as simply one additional ground for care proceedings. This, however, was not politically expedient and instead of advocating the abolition of juvenile criminal courts, it proposed the raising of the age of criminal responsibility to twelve years. In the event, the subsequent Children and Young Persons Act 1963 raised the age of responsibility to ten years of age, but did little to untangle the web between crime and care jurisdictions.

The most outstanding feature of the Act was its implementation of Ingleby's other main recommendations which authorised local authorities to undertake preventive work with families.

# Developments in the 1960s

Despite the makeshift approach in the 1963 Act, the 1960s were a period

of considerable importance to child law. The Kilbrandon Committee, sitting since 1961, was considering the provision of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection beyond parental control. In 1963, a similar committee was established under the chairmanship of Lord Longford to report under a similar brief to the Kilbrandon Committee, but concentrating solely in England and Wales. Kilbrandon reported first and recommended: (a) abolition of the criminal jurisdiction of juveniles and its replacement by lay appointed magistrates; (b) juvenile panels conducting juvenile hearings; and (c) social education department administered by local education authorities.

The object of these recommended changes was, through public action, to reduce and ideally eliminate the legal concept of delinquency. For Kilbrandon, criminal law was far too reactive in character based on evolved tradition, statute and character, whereas child care should be a far more proactive, ever changing, consciously constructed mechanism for achieving explicit social goals. The Longford Committee did not advocate such far reaching measures as Kilbrandon. The Committee had been established to examine the efficiency of the dissolution of the juvenile courts. It proposed to relieve this by raising the age of responsibility to sixteen and fusing the crime jurisdiction of the court into a new unified care scheme. But like its predecessors, the plan failed to achieve a neat boundary at the upper age limit where it met the adult court. In order to ease the abrupt transition from no responsibility to full responsibility, Longford thought it necessary to reintroduce the concept of moral quarantine to cater for the seventeen to twenty-one year olds in the youth courts.

In support of Longford, a White Paper appeared in 1965 entitled: 'The Child, The Family and the Young Offender'. The paper strongly argued that much delinquency, as indeed with most social problems, can be traced back to inadequacy or breakdown in the family. Consequently, one has to begin with the family. Due to the influence of the Longford Committee and the White Paper, a new concept was introduced, that of the family council, consisting of social workers already employed as child care officers in local authority children's departments and other persons selected for their understanding and experience with children. This was a more precise mechanism than that envisaged by Longford, where parents and social workers were to be encouraged to arrive at voluntary agreements outside existing institutional frameworks. Further, the 1965 White Paper advocated that in addition to the family councils, family courts should be established to replace juvenile courts.

Not unexpectedly, this stimulated substantial opposition from existing magistrates, police and probation officers. Consequently, a second White Paper appeared in 1968 entitled, 'Children in Trouble'. As a response to the opposition provoked by the previous White Paper, the recommendations offered in 1968 were far more conservative. Juvenile courts were to be retained

but to be used as a place of last resort. Cooperation between police and social workers was to be encouraged along with greater use of police cautions and liaison schemes. Specifically, below the age of ten only care proceedings based on care criteria were to be possible. From ten to thirteen years of age, children brought before a juvenile court should be accepted into care whenever possible. From thirteen to seventeen a complicated system of mandatory consultation between police and local authority social service departments, plus applications to an examining magistrate were to be introduced to ensure that only the most serious offenders were prosecuted and then after all other possible approaches had been tried.

The result of the two White Papers and the Longford recommendations was an unhappy compromise between the need for an adequate social definition of deprivation and delinquency and legal requirements to combat the criminal element. Despite this, it formed the basis of the Children and Young Person's Act 1969.

# Children and Young Persons' Act 1969 The formal aims of the Act were:

- To reduce a wide range of pre-existing child law into a single jurisdiction dealing in similar ways with children who commit offences, or stay away from home, or are in need of care and protection. The new supervision and care orders came into being as a means of emphasising and giving more attention to care proceedings and less to crime proceedings.
- 2. To promote greater cooperation amongst the agents involved by establishing procedures linking police and social service departments and permitting the latter to exert some influence over the choice of children to be brought to court.
- 3. To give additional powers to social service departments to play a larger part in treatments and to determine the meaning of court-made care orders according to their own interpretation of a child's needs.

As the 1969 Act is legislation currently practised, analysis of its effects in English society will be given later in this article, after describing the latest piece of legislation concerning child care law, that of the Children's Act 1975.

## Children's Act 1975

This Act is probably the most important piece of child care legislation since the Children and Young Person's Act 1969, as it established beyond doubt the importance of fostering and adoption as forms of social treatment. A study in the early 1970s by Jane Rowe and Lydia Lambert entitled 'Children Who Wait' showed that approximately 2,000 children linger in long term care

because their parents refuse to consent to adoption. A further 5,000 children in long term care were thought to need something short of adoption, such as a secure fostering situation for which the law offered no provisions. This study added to the already well accumulated evidence concerning the harmful effects on some children of residential care. It indicated the need in the long term for good fostering placement or adoption where appropriate, as preferable forms of care to residential establishments. The changes brought in by the Act fall into three main areas:

- 1. Changes in law relating to adoption. Here the major change is that the Act places the onus on local authorities to ensure the provision of comprehensive adoption service either by themselves or in conjunction with approved adoption societies. The Secretary of State for Social Services becomes responsible for approving voluntary adoption societies. Further, the status and property rights of the adopted child are aligned closely with those of a legitimate child born into the family. As safeguards were introduced to protect the adopted child in his adopting family, similar safeguards were established to maintain the interests of foster parents who have parented a child for five years and have applied for its adoption. The natural parents will be restricted from removing the child from the foster parents until after a decision is reached at the hearing of the application to adopt.
- 2. The introduction of a new status midway between that of foster parents and adopter called 'custodianship'. Essentially, a custodian is some one who has legal custody of the child in his care. However, unlike adoption, custodianship is revocable and the court may make a custodian order when an adoption order has been applied for but the court feels that the former order is more appropriate.
- 3. The powers and obligations of local authorities in respect of children in care and children who are privately fostered were extended. Not only were local authorities given the right to assume parental rights and duties on behalf of voluntary organisations, but were given the power to investigate parents, as to their capacity for the care and development of the child, who intended to remove a child that had been in care for six months or more.

#### ASSESSING THE CURRENT SOCIAL SCENE

Having completed a brief history of child care law, the question to debate is what effect has this legislation had on British society? Further, are there new developments and needs not covered by law? In an attempt to answer the two questions, discussion will take place under two headings; the trends in juvenile delinquency and the trends in child abuse.

## Delinquency

The trend seems to be that the numbers of juvenile offenders in care is gradually falling. Unfortunately, the decline in the use of the care order and supervision order has been accompanied by a corresponding increase in the use of custodial sentences. The Tables 1-6 give an accurate and up to date account of the current situation in England.\*

As can be seen from Table 1 (males of 10-13 years of age and males of 14-17 years of age, for both groups), the total number of those found guilty and the

TABLE 1 NUMBERS FOUND GUILTY IN THE JUVENILE COURT COMPARED WITH THOSE CAUTIONED

Year	Guilty	Cautioned	Per cent
	Males 10-	13 years	
1965	22,363	10,232	31.4
1966	21,365	11,222	34.2
1967	21,885	11,668	34.8
1968	22,018	13,435	37.9
1969	22,139	18,501	45.5
1970	21,401	21,816	50.5
1971	17,964	27,389	60.4
1972	19,269	33,029	63.2
1973	19,839	34,510	63.5
1974	22,947	39,315	63.1
1975	21,418	37,028	63.3
1976	20,071	34,932	63.5
1977	20,929	42,154	66.7
	Males 14-	17 years	
1965	32,052	5,966	15.7
1966	32,154	6,459	16.7
1967	31,970	6,542	17.0
1968	34,253	7,621	18.2
1969	41,691	11,956	22.3
1970	43,789	14,317	24.6
1971	42,977	20,160	31.9
1972	48,593	23,806	32.9
1973	50,871	25,728	33.6
1974	59,725	31,169	34.3
1975	58,901	30,237	33.9
1976	59,514	28,480	32.4
1977	62,639	32,901	34.4

Note: Per cent figure is those cautioned as per cent of all those found guilty or cautioned.

All figures pertain to indictable offences.

<sup>1969</sup> CYPA came into effect in 1971.

CYPA is an abbreviation for the Children and Young Persons Act.

<sup>\*</sup>These figures were researched and compiled by John Poley and his colleagues at Lancaster University, Department of Social Administration.

total number cautioned by the juvenile courts have both increased in number for the years 1965 to 1977 (especially for the male group of ages 14-17 years). A very similar picture is shown in Table 2, indicating the position of females found guilty and cautioned in juvenile courts. Although the total number of those found guilty is far less than the males, there has been a substantial increase in the total numbers especially for the age group 14-17 years. Tables 3 and 4 indicate the trends for males of age groups 10-13 and 14-17 years who are found guilty of indictable offences.

For both groups, the use of care and supervision orders has become less popular. In the 10-13 age group, the numbers fined, bound over during

TABLE 2 NUMBERS FOUND GUILTY IN THE JUVENILE COURT COMPARED WITH THOSE CAUTIONED (FEMALES)

Year	Guilty	Cautioned	Per cent	
more de l'indication de la more de l'indication de la more de la m	Females,	10-13 years		
1965	2,697	2,227	45	
1966	2,467	2,385	49	
1967	2,554	2,403	48	
1968	2,503	2,745	52	
1969	2,535	3,715	59	
1970	2,460	4,848	66	
1971	1,712	6,683	80	
1972	1,848	8,877	83	
1973	1,947	9,762	83	
1974	2,359	11,939	84	
1975	2,374	11,724	83	
1976	2,412	10,541	81	
1977	2,517	14,193	85	
	Females, 1	4-17 years		
1965	4,928	1,665	25	
1966	5,011	1,942	28	
1967	4,574	1,535	25	
1968	4,646	1,958	30	
1969	4,876	2,835	37	
1970	5,262	3,505	40	
1971	5,035	5,668	53	
1972	4,989	6,996	58	
1973	5,195	7,331	59	
1974	6,590	9,189	58	
1975	7,054	9,318	57	
1976	7,305	8,900	55	
1977	7,722	10,680	58	

Note: Per cent figure is those cautioned as per cent of all those found guilty or cautioned.

All figures pertain to indictable offences.

1969 CYPA came into effect in 1971.

a period of conditional discharge, and involvement with attendance centres, have increased.\* Table 4 indicates that a similar trend applied to the 14-17 age group; that of reduced use of care orders, supervision orders and probation and increases in conditional discharges and involvement with attendance centres, detention centres and Borstal.† Table 5 and 6, representing females of age groups 10-13 and 14-17 years, indicate similar trends, but with a less dramatic increase in conditional discharge and Borstal residential training.

Current opinion amongst social workers, social theorists and social administrators, is that the Children and Young Persons' Act 1969 has not worked (Thorpe 1976; Poley and Green 1979; Priestley, Fears and Fuller 1977). Fundamentally, the essence of the problem is that which has bedevilled child care legislation since the late 19th century, namely, the difference between treatment and punishment. Whether children are introduced to treatment or punishment for an offence committed, the stigma of criminality remains.

TABLE 3 DISPOSALS AS A PERCENTAGE OF THOSE FOUND GUILTY OF INDICTABLE OFFENCES

(Males	10-13	years)
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Year	Fit Person an Approved School		Fine Conditional Discharge		Attendanc <b>e</b> Centre	
1965	8.5	33.0	17.8	26.4	9.8	
1966	8.9	32.0	19.5	24.7	10.6	
1967	8.8	30.4	18.7	28.0	10.6	
1968	9.0	29.3	17.7	28.5	11.7	
1969	9.4	31.4	18.2	27.2	11.6	
1970	10.1	28.1	18.6	27.3	12.7	
	Care Order	Supervision	Fine	Conditional Discharge	Attendance Centre	
1971	12.6	28.4	19.3	25.1	12.2	
1972	11.6	25.7	20.6	26.9	12.7	
1973	11.8	25.1	22.2	26.4	12.3	
1974	12.0	23.9	21.8	28.5	10.0	
1974	12.0	23.9	21.0	20.0	12.0	
THE RESERVE	12.0 11.7	23.9	21.0	30.1	12.0	
1975 1976						

<sup>\*</sup>A conditional discharge has become a popular option of sentencing offenders in both juvenile and adult courts. The defendent is found guilty but is discharged from the court on condition that he is not found guilty by court for that or another offence, during a stipulated time period. If, however, he/she is found guilty during that period, then both offences will be taken into account for the purposes of sentencing.

<sup>†</sup>Attendance centres and detention centres were created to provide for intermediate treatment which consists of organising small group projects in which young offenders become actively involved. The idea is borrowed from youth work and the intention is that through providing activities, education and counselling, a sense of social responsibility to oneself and others is generated amongst the group members.

TABLE 4 DECISIONS IN JUVENILE COURTS, 1965-1977, AS A PERCENTAGE OF ALL THOSE FOUND GUILTY OF AN INDICTABLE OFFENCES

(boys, aged 14-17 years)

Year	Fit Person and Approved School	Probation	Fine	Condi- tional D.	Attend- dance C.	Deten- tion C.	Borsta
1965	8.3	28.5	31.1	18.1	7.1	2.4	1.5
1966	8.6	27.3	33.3	16.6	7.5	2.3	1.8
1967	8.0	26.6	33.3	18.6	6.9	2.4	1.8
1968	7.6	25.6	31.8	19.9	7.6	3.1	1.9
1969	7.2	23.6	36.4	18.3	6.8	3.3	2.0
1970	8.0	21.8	37.9	17.1	7.3	3.5	2.4
	Care Orders	Super- vision	Fine	Condi- tional D.	Attend- dance C.	Deten- tion C.	Borstal
1971	7.9	19.4	39.8	17.0	7.5	3.3	3.1
1972	6.7	17.0	42.4	17.2	7.6	3.8	3.3
1973	6.8	17.3	40.9	17.3	7.9	4.6	3.4
1974	6.1	17.2	40.3	18.0	8.7	5.0	3.1
1975	5.9	16.0	39.4	18.5	8.9	6.1	3.8
1976	4.8	15.3	38.1	19.4	9.6	7.3	3.9
1975	4.2	15.0	39.1	19.8	10.2	7.3	3.3

Second, little ideological, conceptual and/or practical research and development has examined the question of whether treatment or punishment has anything to do with offending as such. Whether referred for treatment or punishment, the majority of applicants before a juvenile court come from poorer working class background. Those of middle class background attending good schools manage to avoid appearance in the juvenile court as both the family and the school can deal with the routine delinquencies that occur. However, for those of the poorer working class background, when their treatment and/or punishment is over, they return to their previous community environment. Consequently, pressure is placed on the child to repeat similar delinquent behaviour and to once more re-affirm the old social values of their background and community.

Third, the expected cooperation between social workers and the police has simply not occurred. The police are trained towards preparing evidence for well-constructed prosecutions and the processing of juvenile cases is a task which absorbs only a small percentage of their total time. Due to the differences of expectations and the ensuing lack of communication between social workers and the police, a climate of hostility, mistrust and definite lack of cooperation has developed. Due to this non-cooperation between the police and social workers two different procedures have been adopted for the presentation of cases in juvenile courts, that of referral to a residential

1977

1977

TABLE 5 DISPOSALS AS A PERCENTAGE OF THOSE FOUND GUILTY OF INDICTABLE OFFENCES

(Females 10-1	13 years)	
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Year	Fit Person and Approved School	Probation	Fine	Conditional D.
1965	(5.7)	35.6	24.0	30.7
1966	(6.1)	34.7	26.1	29.3
1967	(5.8)	31.8	24.7	33.7
1968	(6.7)	34.8	20.9	33.9
1969	(7.1)	32.4	21.4	34.8
1970	(7.8)	30.0	25.7	33.5
	Care Order	Supervision Order	Fine	Conditional D.
1971	9.8	31.6	24.2	31.4
1972	9.9	34.6	23.3	29.5
1973	10.9	30.3	26.1	29.8
1974	10.9	32.3	21.8	33.0
1975	12.4	30.4	21.2	34.0
1976	9.2	26.6	23.7	38.8

# TABLE 6 DISPOSALS AS A PERCENTAGE OF THOSE FOUND GUILTY OF INDICTABLE OFFENCES

26.4

25.0

37.2

9.6

8.1

## (Females 14-17 years)

Year	Fit Person and Approved Schoo	Probation I Order	Fine	Conditional D.	Borstal
1965	(4.9)	34.0	34.6	23.9	0.1
1966	(6.0)	34.5	34.3	22.6	0.3
1967	(6.9)	34.1	31.5	24.4	0.2
1968	(6.3)	32.3	32.2	26.0	0.3
1969	(6.7)	32.1	33.0	25.6	0.3
1970	(7.4)	29.3	34.2	26.2	0.3
	Care Order	Supervision Order	Fine	Conditional D.	Borstal
1971	9.1	26.7	34.7	25.6	0.8
1972	9.4	26.2	37.0	23.9	0.8
1973	10.6	26.6	34.8	24.5	0.9
1974	8.9	25.6	36.4	26.0	1.2
1975	9.8	25.6	33.0	28.0	1.6
1976	9.0	23.1	35.8	29.0	1.6

36.9

28.8

1.6

23.0

establishment and that of supervisory orders. From the point of view of the juvenile court, it is certainly far easier to refer a child to a residential establishment than to social care for treatment, and as the statistics indicate this practice is increasing.

#### Child Abuse

The abuse of children has been of particular social and political concern in Britain over the last decade and a half. Attention has increased especially over recent cases of child battering leading to the deaths of certain infants. Although such cases have attracted considerable vigilance from the media (Sherer 1979), the only conclusion that seems to have been reached is that the social services departments were to blame for professional misconduct on the part of social workers and their immediate superiors.

A closer look at the evidence, however, indicates certain trends. In the city of Leeds, for example, between the years of 1969-1973, 117 children were detected with non-accidental injuries, and a considerable proportion of these had serious injuries to the eyes and brain (Morran 1979). In contrast, the Leeds figures for 1974-1978 showed 196 children with non-accidental injury. The number of cases certainly increased but there has been a decrease in the number of serious cases with a fall in the number of fractures or injuries to the eyes or brain. This trend of an increase in the incidence of non-accidental injury to children, but of a less serious nature, seems to be nationwide. A number of reasons are offered as explanation for the trend. The increase in the numbers of battered children is probably not because the total number of batterings has increased, but because more are being discovered, particularly those with relatively minor injuries, of the kind which previously went undetected. Also, the number of serious cases seems to have decreased probably because of the number of government agencies involved in family care, such as doctors, social workers, community nurses, voluntary agency social workers and NSPCC\* inspectors.

Child abuse is a sensitive issue in Britain. Anxiety on the part of the helping agencies to prevent any knowledge of child abuse becoming public, in order to prevent the public scapegoating that has happened in the past, has led to an increase in the general awareness of the possibility of non-accidental injury. This in turn has stimulated greater cooperation and increased efficiency of medical and social investigation and thereby increased the skill in predicting the possibility of future abuse. It seems that the very few deaths of infants that occur due to child abuse has stimulated substantial activity in the detection and prevention of child battering.

#### SUMMARY

This paper is a description; a description of what has happened in the

<sup>\*</sup> NSPCC stands for the National Society for the Prevention of Cruelty to Children.

past in England and Wales and a description of what is happening now as far as it is possible to assess the influences current in one's own society. One thing is singularly clear: considerable attention has been focussed on child abuse and immoral conduct towards children. The helping agencies pride themselves in being able to detect, isolate and treat cases of children in moral or physical danger. Yet the question of delinquency and criminality goes by unresolved. Is it a question of punishment and retribution in response to acts of wrong doing, or is it a question of social treatment and if that is the case what does social treatment mean? English social development has been bounded by an inability to solve the problem of delinquency or social neglect and yet has prided itself in trying to improve the 'moral' position of the child. Not that these are the only problems facing the care of children in England and Wales. Since the Second World War, a steady stream of immigrants from Europe, Africa, the West Indies and Asia, have entered the country. Surprisingly very little is known about the problems facing immigrant populations in their adjustment to their host country. Apart from those offering racist arguments who would only use information for deprecatory purposes, it is only recently that certain trends have come to public light. For example, a high incidence of truancy was reported amongst children of Cypriot families. It has only recently been understood that the majority of children stay at home to assist their parents in their shop, restaurant or small business. Traditionally, Cypriots have generated their income from the use of children as assistants with a view to the children inheriting the business, has been a strong force in the dynamics of the family. For Cypriots, education takes place at home but for some time this was misinterpreted as neglecting the child's future on the part of the parents.

Even less is known about Asian families and their problems and needs. There are relatively few cases of reported delinquencies amongst Asians (especially if compared to the number of West Indian young offenders), and of these the majority of cases are burglaries. A very involved study by Batta, McCulloch and Smith 1975, could offer no meaningful explanation as to why burglary is a recurring offence for young Asians.

It is a truism that the treatment of children is culture bound and will vary from country to country. What may be recognised as child abuse in one sovereign state may well go undetected in another. Most certainly the economic and social expectations of the populace, their religious convictions and life 'mores' combine to form the social patterns, social reforms and the unresolved traumas of that society. I have described how British society has dealt with its children in the past and in the present. What impression this makes on people from other societies, I await your response.

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#### Call for Action

Some are only seven years old, some are mistreated, most are exploited, and there are over 52 million of them: the world's working children.

To help improve their plight, governments, employers' and workers' organisations should apply ILO standards on minimum age for admission to employment and the conditions of work, ILO Director-General Francis Blanchard says in an urgent appeal in support of the International Year of the Child.

He spells out three basic principles for action:

One, a child is not a 'small adult' but a person entitled to self-fulfilment through learning and play so that his adult life is not jeopardised by having had to work at an early age.

Two, governments should, in cooperation with all the national organisations concerned, take all necessary social and legislative action for the progressive elimination of child labour.

Three, pending this elimination, child labour should be regulated and humanised so that the children are protected from working conditions which may retard their normal physical and mental development.

The appeal was unanimously endorsed by the ILO Governing Body.

# Children in Latin America and the Caribbean\*

## Juan Pablo Terra

IN THE 25 years between 1950 and 1975 the population of Latin America doubled, maintaining the highest growth rate among the large regions of the world (2.8 per cent annually). The process has varied considerably, however, from one part of the continent to another. In the Caribbean and in the Southern Cone it grew by only 50 per cent. The increases by countries have varied from 30 per cent in Uruguay to 146 per cent in Venezuela. Among the larger countries, Argentina increased 48 per cent, Brazil 107 per cent and Mexico 123 per cent. All generalisations, therefore, must be made with reserve.

The accelerated growth of Latin America was affected by a persistently high fertility rate, even though in the last decade it had begun to decline, falling from 5.8 to 5.0. With the increasing size of the generations reaching the child bearing age, the number of births has continued to grow, rising from 7 million per year in the period 1950-55 to 12 million at the present time.

The accelerated growth of the Latin American population is due, at the same time, to the low mortality rate. For the region as a whole it has dropped from almost 15 per thousand in 1950 to 8.5 per thousand, and continues to decrease. In this respect also there are very great differences, ranging from 5.3 per thousand in Costa Rica to 16 per thousand in Bolivia. Some countries have attained extremely low mortality rates because of their predominantly young age structures, and it is to be expected, therefore, that they will rise again as the population grows older. The fall in the death rate has not only been greater than that of the birth rate in absolute terms (and of course in relative terms), but it has also been more regular. Practically all the countries that had high rates have made significant progress and have frequently reduced them to half since 1950. It has been the countries with a low death rate and a relatively ageing population that have found difficulty in continuing to reduce it.

The population of Latin America is decidedly young. In 1950-55 the 0-14 age group represented 41 per cent of the total population. After that date it

<sup>\*</sup>An abridged version of the paper presented at the special UNESCO meeting on the subject, held in Mexico City, Mexico, May 1979.

increased slightly and during the present five-year period it has returned to 41 per cent. It is thought that by the end of the century it will drop to 38 per cent, which means that the population will still be very young.

The differences between countries are striking. The percentage of the 0-14 age group varies from 48 per cent to 27 per cent. By the end of the century, at least three countries might reduce this percentage to 26 per cent, while eight could remain above 40 per cent. A very pronounced decrease could occur in the Caribbean, with a drop from 38 per cent to 29 per cent.

The proportion of people aged over 64 in Latin America is expected to rise only from 4 per cent to 4.5 per cent, and in the Caribbean from 6 per cent to 7 per cent. Once again only Argentina and Uruguay have high proportions of old people, which may well exceed 10 per cent by the end of the century.

Because of this young age structure, the figures for children are very high. By 1980 the 0-14 age group in Latin America will reach 147 million. There will be 12 million under 1 year of age, 33 million from 1 to 3 years, 21 million from 4 to 5 and 64 million school children from 6 to 12 years of age. The figures by countries are given in Table 1 (p. 798). By the end of the century the total of the 0-14 age group will increase to 226 million.

With the addition of the Caribbean, which will reduce to some extent the proportion of the child population, the figures will rise from 150 to 230 million children between 0 and 14 years of age.

A striking feature of the Latin American population is the increasing rate of urbanisation, despite the fact that the process is already very advanced. In 1975, 61 per cent of the population was urban and it is thought that the proportion will rise to 75 per cent by the end of the century. Between 1970 and 1975 the urban population grew at an annual rate of 4.8 per cent, while the rural population grew at a rate of 1.3 per cent and the total at a rate of 2.8 per cent.

The situation differs from country to country but the trends towards rapid urbanisation have few exceptions. The proportions of urban population, apart from the special cases of Haiti (23 per cent), range from 37 to 85 per cent. The growth rates of the urban population are low only in countries of slow growth and already very urbanised. In the remainder they vary between 4 per cent and 8 per cent annually.

#### THE SUBMERGED CATEGORY

Within the overall situation of the region it is important to establish where the greatest concentrations of the most seriously deprived children are to be found. These children and their families are known as the 'submerged categories'. The analysis shows that in some cases it is a question of groups forming compact social units localised in specific parts of the country, as in the case of indigenous communities or marginal districts. However, in other

cases it is simply a matter of categories comprising individuals or families with certain common problems, but dispersed throughout the social structure and the territory. Several of these categories overlap, having a joint impact on the same people.

Poverty

One of these categories is poverty. The gravest problems affecting children, both in their biological and psycho-social aspects are connected with poverty. This statement might be considered as useless repetition, since the concept of poverty signifies the lack of basic needs. Since poverty, however, applies to the family as a whole, which is the social unit where the most essential goods are shared, and since for practical reasons the main features of poverty are defined in relation to income (income per capita or per unit of consumption in the family) the connection between the two realities must be made clear.

The distribution of poverty is very unequal. In nine countries studied the proportion of poor people varies from 8 per cent of the total population in Argentina to 65 per cent in Honduras. In most cases it comprises between a quarter and half of the population. Sixty per cent of the poor live in rural areas, although the rural population is less numerous than the urban. The poorer the families, the larger they tend to be, with a low ratio of economically active members, an unusually high proportion of women at the head and 55 per cent of children under 15 years of age. Work is the sole source of income. Unemployment is greater than normal although most of the heads of families work. Irregular work is common and the low remuneration accounts for more than 50 per cent of the poverty. The educational level of the heads of these families is very low, and school dropouts are frequent among the children. Marriages are early and to a great extent consensual.

The poor are found in very varied sectors of economic activity and are distributed among wage-earners, small farmers, artisans, self-employed workers and the retired. As regards residence, although there are large concentrations of poor people in both town and country, dispersion is also prevalent.

# The Problem Family

The foregoing shows that certain characteristics of the family are frequently linked with poverty and increase it; for example, the high proportion of children, the absence of the father, the low ratio of economically active members. Indeed, it is not easy to distinguish the cause from the effect.

To appreciate the plight of the children it is essential to understand how the structure of the family and the various roles within it interact with the class situation and the material conditions of nutrition, health, housing, culture, work and income of its members. Some types of family create serious biological or psycho-social problems for the children. Hardships for children tend to result from: early and unstable unions; the absence of the father; the

mother working away from home without adequate arrangements or replacements; the excessive number of children in relation to health and resources; the promiscuity and overcrowding in the homes; the conflictive relationships; authoritarianism and *machismo*; the premature employment of the children, and also the traumatic situations of the families of migrants, displaced persons, convicts and refugees. There are, therefore, types of families where the problems of the children are cumulative. In some cases they result in the abandonment of the child. A typology of the problem family, the family of high risk for the child, would be an excellent instrument for the diagnosis and treatment of the situation of children.

## The Relegated Groups

The child problem arises among the relegated categories, which are often physically and socially dispersed. It also occurs, however, within certain types of social groups that are physically united and socially organised. Three types will be mentioned because of their importance and prevalence in Latin America.

# Groups of Inhabitants in Urban Marginal Districts

Although in some cases the residents of the marginal districts include workers and employees of firms in the formal sector of industry, construction and commerce, under pressure of transport difficulties, land prices and low wages, their presence is usually transitory, either because they soon look for another place to live, or because their capacity gradually transforms the area. Even in these cases, the deficiencies of the environment and the services and the economic difficulties connected with the family cycle are very costly in human terms for the children.

The most typical inhabitants of these districts, however, are the workers in the 'informal sector': wage-earners in sporadic occupations and workers on their own account. The men are employed in personal services and construction, the women in domestic services and personal services. The wages are low and irregular and even the children have to help to supplement them. This induces them to leave school early and to take up the occupations of their parents. The families are large in relation to the rest of the city, although it is usual to find that birth control is now making itself felt in this medium. Censensual union is frequent, as also are families with women at the head and the sporadic or changing presence of the father figure. The instability of the union is often linked with the alcoholism of the father. The effects of all these conditions on the children in respect of nutrition, health and education are very serious and it is not infrequent for them to abandon their homes.

# Rural Communities

The transformation of the rural areas in Latin America is not only evidenced by the fact that the surplus growth of population, not finding

employment, has to migrate. The introduction of large modern enterprises technically equipped and the development of commerce gradually destroy the traditional subsistence agriculture in many places, although for a time both systems co-exist. The old system, in which the premature labour of the children and the sacrifice of their future opportunities represented a forced self-exploitation, subsists alongside processes in which the children have to suffer the effects of uprooting, migration, changes in the rules of conduct, disruption of the family and adaptation to urban life through a long period of marginality.

Among those who remain on the land there are many types of families: reference is made here only to the small agricultural producer and to the plantation wage earner. The small producer, with land limited to his subsistence level and little or no technology, shows a productivity which is little more than partial unemployment in disguise. He alternates his activity with paid labour. His sons work as day-labourers. When they marry they return to their father's home or migrate. The daughters generally leave home to work as domestic servants in the cities.

The scarcity of land and the vicissitudes of agriculture cause them varying degrees of privation. The sons have to help from an early age. Lacking incentive and cultural support, they are habitually school repeaters and dropouts. Fertility is high, and the women, who take part in the labours of production in addition to their domestic tasks, are heavily overburdened with work.

The privations in respect of environment and services have already been mentioned. Food is deficient in quality and sometimes in quantity. But the family is stable. The burden of members economically inactive is often great owing to the migration of those who are at working age. The family group, however, operates as an instrument of solidarity, which is broken by migration. The migrant does not find instruments of social solidarity to take its place.

The seasonal wage-earner in the plantation sector is a landless labourer without any permanent attachment to an estate. He lives outside the productive establishments in small villages or at the side of the roads. He does not produce enough for his own use. His home is seriously lacking in basic necessities. The earning of an irregular wage demands long absences on the part of the man. The woman in the meantime becomes the head of the family and has to supply or supplement income with tasks inside or outside the home, which also represent a crushing burden. Material and especially nutritional conditions tend to be worse than in the family of the small farmer. The instability of the union, the very large number of children, and the tendency of these to go to work prematurely or to migrate only serve to aggravate the effects.

# Indigenous Communities

Three types of indigenous population must be distinguished: the traditional agricultural community, the indigenous inhabitant of urban marginal districts

and the indigenous tribes.

In the first two cases the indigenous condition is superimposed on other conditions already analysed and in a sense brings the further problem of a conflict of cultures.

In the case of the indigenous city-dweller, especially in the first years of migration to the city, the conflict of cultures is at its most intense. In the marginal districts he seeks relationship and neighbourliness with people of his own kind, thus creating ties of solidarity and helping to preserve the language and other forms of culture. But if this helps him to maintain his identity, it intensifies the causes of social and occupational segregation that accentuate his urban marginality. The children experience the conflict from their school days, where it seriously limits their possibilities of education. Sooner or later the indigenous youth is faced with the option of rejecting his culture and adopting the ways of the mass of society or of making a stand against them and defending his identity. Both options involve conflict and neither eliminates segregation.

The indigenous family in a rural community has many local peculiarities. In general, productivity is minimal through shortage of land. The produce is destined mainly for personal consumption. The habitat is rudimentary and the natural environment is frequently hostile. The women do housework, craftwork and rural tasks, which implies a very heavy burden. The children from the age of four to six assume tasks such as shepherding, domestic work, the care of younger brothers, the fetching of water, etc. Added to the language problem and the defects of the school service, this contributes to their very low level of education. Considering that the shortage of land drives them to migrate, this inadequate cultural preparation has very serious consequences. Health services are scarce and traditional forms of medicine persist.

Marriages are early, especially for women. Breast-feeding is generally prolonged, partly as a defence against nutritional and environmental deficiencies, but this defence is inadequate and creates problems when the pregnancies are frequent. The families are very stable and have a large number of children.

The indigenous tribes, which form nomadic or semi-nomadic communities dedicated to hunting, fishing and cropping in the forest zones, are now very few in number. Their lack of sanitary and educational services is almost total. As they do not integrate with the mass of society they are progressively rejected and driven from their territories, especially from the banks of rivers, which are the routes of communication in the forest. This forces them into inhospitable or already occupied territory. Conflicts with white people and inter-tribal battles, added to a deterioration in food conditions, threaten these groups with total extinction.

## POLICIES AND SERVICES

In the decade of the 1960s the countries of Latin America adopted

ambitious goals of economic growth. On average they achieved them. Nevertheless the gaps between them and the more developed countries continued to widen. Growth itself left basic problems unresolved, such as unemployment, the unequal distribution of income, the margination of large sectors of the population, and poverty. Among these will be found most of the problems affecting children.

After this experience the concept of development became more complex. Emphasis was placed on the fact that social progress is not an automatic result of economic growth. The countries of Latin America and the Caribbean endorsed the United Nations Strategy for the Second Development Decade, associating themselves with a united approach to the subject, which combined social and economic objectives on equal terms in the interests of the quality of human life.

From the very beginning the project of development in Latin America was linked with the planning instrument. In the 1960s all the countries had created their planning agencies. The plans, elaborate documents which raised the level of information and discussion, rarely came to be the tools of planned development processes. In many cases they remained foreign elements within the traditional political and administrative machinery.

Even at that time some social sectors, such as housing, health and education, had been incorporated into planning. Within the unified concept of development social planning had necessarily to be amplified. In the present decade several countries have embarked on new aspects such as regional development, integrated rural development, underemployment, food and nutrition and, in relation to certain aspects, the problems concerning children. With international cooperation, methodologies and training of personnel for social planning have been improved. In the subregional integration agencies there has been an advance in the approach to social problems: common planning and strategies in Central America; agreements on education, health and labour in the Andean Pact. Within countries institutions have been established in many territorial subdivisions. In the region as a whole government representatives have met every two years to assess development and have continued to cooperate in other fields such as health.

These advances have not been uniform, nor have they always been in the same direction. Worldwide inflation, the price of oil and the recession have compelled many countries to revise their strategies in economic circumstances of some gravity. In addition to this, however, internal orientations have suffered profound changes. Conflicting views have arisen on the role of the state and the machinery of development, and also on objectives such as the distribution of income, the redistribution of land or the control of social and cultural life. In consequence, planning has suffered changes and in some cases reverses.

Paradoxically, in Latin America these changes have not involved a loss of influence on the part of the state. Even in the countries where it was decided

to entrust a great part of the work to private enterprise and the market, new and even more energetic forms of state intervention have been necessary in social life and in the distribution of income in order to create the appropriate conditions.

As a result, the role of public policies continues to be in one way or another pre-eminent. Responsibility for the conduct of the process obviously rests with the governments. The application of a unified approach to development will continue to be inseparable from a vigorous set of public policies in the social field and some system for planning them.

# Planning and Policies for Children

The sectoral approach to planning, by no means flexible during the 1960s, obstructed an integral attack on the problems affecting children. Action was generally uncoordinated in the fields of health and education and to some extent also in the case of housing and social security. The services, too, were on the whole sectoral; only in their best examples, such as maternal and child welfare, schooling and housing programmes, was there an attempt to analyse the causes and seek solutions beyond the scope of their speciality.

Already at the start of this decade it had been accepted in principle that it was necessary to confront the child situation in an integrated form, taking into account as a whole and in their several relationships: deficiencies in respect to food and nutrition, health, education, family unit, housing and environmental hygiene; problems of income from production and employment; and considerations of land tenure and population. It had also been agreed that coherent policies were needed not only to alleviate the symptoms but also to eradicate the causes.

In the course of the 1970s there has been an increase in the formation of integrated services in specific areas affected by serious problems. At first there was an attempt to integrate formal services. Later it was decided to create basic services for children, with the active participation of the community, and the utilisation of local resources and personnel having elementary and secondary schooling. This solution permits a substantial increase in coverage in relation to resources and a more flexible adaptation to local needs. Undoubtedly there are problems in connection with interagency cooperation. Some derive from the different coverages, others from the instability of solutions subject to several authorities. In general better results have been achieved in the execution of limited projects such as the construction of the building and its equipment rather than in the continued operations of the service which requires administrative coordination and a permanent budget. It is undeniable that these instruments could help to bring about a substantial improvement in the conditions of children in the region, but to achieve this it is essential to surmount the stage of limited experiments and to adopt overall strategies for children, the need for which is deeply felt.

With regard to the so-called submerged categories, it must be pointed out

that they should be the object of special study and consideration within the scope of the strategies and policies. Among these the groups of marginal urban settlers, the rural communities and above all the indigenous groups are not only in a particularly tragic situation but also, as they live in groups and to some extent segregated from the rest of society, make very direct and specific action possible. The dispersed categories, however, should not be forgotten.

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## Food and Nutrition Policies

Policy orientations in the past were focused on certain aspects, following scientific developments. During the first half of the present century, interest in nutrition was centred on the problem of avitaminosis. Once its causes were known, special treatments were introduced to control it.

Around 1950 the governments and international organisations turned their attention to protein-calorie malnutrition. The most serious conditions became the chief objects of study, namely, kwashiorkor and marasmus. Towards 1955 there was increasing concern over protein deficiency and the foods able to compensate it, an interest which continued into the 1960s when attempts were made to identify the high-risk groups suffering from these deficiencies. Special consideration was given to pre-school children, the state of nutrition during pregnancy and breast-feeding, and the relation between infection and nutrition.

In recent years emphasis has been placed on calorie-deficiencies. Currently it can be concluded that the major part of the population is able to cover its protein needs because their energy requirements are provided from cereals and legumes. The same does not hold true in countries or regions where the staple food is tubers and roots which provide little protein.

The concern for nutritional problems in the 1950s gave rise to a fund of information gathered from surveys and to the implementation of supplementary feeding programmes mainly with milk. The production and supply of food products was always a matter of concern, especially since planning was introduced, because of its intrinsic importance and its impact on prices and foreign trade. From the food and nutritional standpoint, however, the approach was often weak and paid little attention to distribution and accessibility, the basic problems of the submerged categories. In the same period of the 1960s there was a boom in programmes concerned with the enrichment of basic products, such as cereals, milk, salt or oil, by addition of vitamins. minerals, proteins and aminoacids. Subsequent assessments showed that these products had had little effect, as they had not reached the low-income groups. Given to pre-school children, school children, pregnant and breast-feeding mothers, they had a salutary effect as long as the treatment lasted, but as there was no change in the family conditions the effect tended to be lost afterwards. Moreover, there was little chance of its penetrating the rural areas. One of the most interesting experiments was that of the applied nutrition programmes,

which combined educational and practical activities in the fields of health, education and agricultural production. This may be considered the first attempt at a multicausal approach.

The new approaches and the food crisis of 1972 stimulated initiative. There has been an improvement in the knowledge and level of academic centres. The institutional network in the region has been strengthened to promote the formulation and execution of national food and nutrition policies, while the number of institutions in the countries has increased and some successful national projects have been developed. The new orientations embrace the whole of the 'food and nutrition system': production, foreign trade, the food industry, marketing, demand with all the factors that influence it, consumption and the biological utilisation of food, with a view to devising policies to confront all bottlenecks. The measures relating to children have their place within the framework of a global strategy.

## Health Policies and Services

Health policies directed to mothers and children in Latin America have undergone successive modifications in concept and practice. After the more or less vertical approach that characterised the services and programmes of maternal and child welfare (with emphasis on the supervision of growth, feeding, immunisation, and education in basic child care), there was a preliminary phase when preventive and curative measures were incorporated into these services, after which they were finally included in the general health services.

Recent years have brought a clearer perception of the family as a biopsycho-social unit, endowed with its own readjustment mechanisms for functioning in adverse circumstances. This has given prominence to the concept of family health and thence to the identification of the family as a unit for health care.

The central problem today is the coverage of the services, since the lack of resources in some cases, and more frequently their concentration in certain areas and social groups, is the reason for the present situation. The regionalisation of the services is an attempt to meet this problem, but unsupported it is not enough to solve it.

In face of the magnitude of children's needs, the implementation of this concept would be impossible by traditional means. A practical way of extending the coverage has been found in the provision of basic health services by workers with rudimentary training, with the active participation of the community and with support from reference and supervisory levels. This approach has received widespread support in the region, although there remain countries which while in a position to adopt it, prefer to apply a more strictly professional system.

The targets set up in 1972 in the context of the ten-year health plan aim to reduce to an ambitious extent the risks of illness and death; for infants under

one year by 50 per cent, for children aged 1 to 4 years by 60 per cent; for mothers by 40 per cent. As a condition of success it is considered essential to achieve 60 per cent of coverage for pre-natal care; 60 per cent to 90 per cent for the confinement and 60 per cent for post-natal service. As regards the children, it would be necessary to achieve coverages ranging from 90 per cent for children under 1 year of age to 50 per cent for those of 5 and over. However ambitious these goals may seem, their achievement will not remove the tragedy from the situation of child health. Moreover, these are isolated goals in the health sector. If the region were to decide to deal with the problem not only by conventional methods concerned with visible results and immediate causes, but by an attack on the conditions which create it, the mass of suffering and death might be substantially reduced.

## Health Services

Immunisations: As the above account of the health situation has shown, there are still appreciable figures for diseases preventable by vaccination, despite the extension of these services. Today, extended immunisation programmes are tending to surmount this barrier in several countries.

Maternal and Child Services: As in the case of other services, the main problem lies in the unequal distribution of care at the various stages and in respect of its different components. The greater part of the resources are concentrated in the large urban centres. Efforts are being made to correct this imbalance. The first task is to amplify primary health care in the communities with insufficient coverage by means of the so-called risk criterion, that is, by means of a flexible distribution of resources in relation to the degrees of risk. In the case of the mother a high risk is represented by the first pregnancy, numerous deliveries, the excessive frequency of the pregnancies, pregnancy at the extremes of the childbearing age, the previous loss of a child and malnutrition. In the case of children the high-risk cases are those belonging to a large family, with overcrowding, illiterate parents, and poor sanitation in the home.

The current figures for coverage are extremely unequal. As regards prenatal care, in 1976 the number of consultations for pregnancy in the countries possessing data ranged from 8 to over 600 for each 100 live births, while the percentages of deliveries carried out in institutions varied between 32 per cent and 98 per cent.

Human Resources: In respect of human resources for health, whereas in 1973 Argentina had 22 doctors, 6 nurses or 10 auxiliaries for each 10,000 inhabitants, the figures for Haiti in 1976 were somewhat less than 1 doctor, 1 nurse and 4 auxiliaries. In general the figures for doctors in Latin America range from 2 to 10 per 10,000 inhabitants. The major problem, however, is not the shortage of personnel but their concentration. The effort required is threefold: to increase the supply in many countries, to increase the proportion of intermediate categories, auxiliaries and community workers to cover the

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extension of the services; and to change the spatial distribution.

Policies and Services for Pre-school Children

In the middle and high-income strata of Latin America and the Caribbean the environment generally guarantees provision of the basic elements for the stimulation, health and nutrition of children. Deficiencies in respect of health and nutrition are mainly found among the poor and both the physical environment and the type of psycho-social stimulation cause inequalities in comparison with other groups. This becomes evident later on in the school performances causing a high rate of repetition and desertion in the early years. The cumulative effect of this has a subsequent impact on productive opportunities and social life.

The first programmes of care for children at the pre-school age appeared at the end of the nineteenth century and the beginning of the twentieth as a counterpoise to urbanisation, female labour outside the home and the gradual disappearance of the extended family. In addition to new legislation for the protection of children, services in the fields of hygiene, nutrition and nursery schools or creches were introduced, with preferential concern for the physical aspect of child welfare.

In the middle of the present century kindergartens both private and public began to appear, with emphasis placed on the educational side. In some countries these services were introduced by the ministries of education with an average coverage of no more than 8 per cent. In general they were a feature of city life and favoured the children of prosperous families. Other types of institutions have undertaken the care of orphans and abandoned children. Even so, very few poor children have received attention and this has been solely directed towards their physical welfare.

A new interest in policies for pre-school children made its appearance at the end of the 1960s in the context of social development planning. Although the official programmes have tended to give preference to the educational aspects at the stage immediately preceding school, the persistence of problems such as malnutrition, mental retardation and other consequences of poverty, together with the influence of the new concepts on the evolutional development of the child, have created new approaches in the region which are gradually receiving wider application.

The programmes of pre-school education are beginning to incorporate attention to health and nutritional needs. There are programmes for children of up to three years of age which emphasise the prevention of the effects of biological, environmental and social privations on the physical and mental development. Likewise, experimental programmes and research studies are taking place in several countries with a view to defining strategies of integral child care, which take into account the economic, social and cultural context. The integral care of the child from birth to six years of age is recognised as a stage by itself and tends to be handled outside the sphere of the ministries of

education.

Nevertheless, most of the services in the region still limit themselves to isolated aspects relating to the basic education, nutrition and 'welfare' of the child without considering their interrelation or the role of the family. The traditional models require a large and specialised staff and are costly to run and limited in coverage.

At present attention is centred on the concept of integral care and on the definition of risk criteria permitting priorities to be established. There is an awareness that action should be adapted to different needs at different stages of the child's development and also in the varying environmental conditions. There remains, however, a dearth of proved operational models that would facilitate its application on a large scale.

## Educational Policies and Services

In the years between the immediate postwar period and the 1960s the authorities were mainly concerned with primary education, prompted on the one hand by the populistic regimes and on the other by the process of urbanisation and industrialisation, which demanded an increasingly rapid supply of manpower.

In the 1960s and in the years that have elapsed in the present decade, industry has ceased to be a promoter of employment. Competition to enter the privileged sector of the employment market has been very great, and social demand has come to play an important role in education. Rural schooling remains relatively stagnant and its disparity with urban standards is increasing. Primary schooling in the cities is still expanding but it is secondary and higher education that reveals the most remarkable growth. Levels previously reserved for the elite are now open to vast groups of the population. In some countries, secondary level students represent 60 per cent or more of the 13 to 19 age group; in others higher education accounts for some 25 per cent of the 20 to 24 age group. The picture presents striking contrasts, since at the same time considerable proportions remain outside the primary school system and a number of rural children never even achieve literacy. If this trend continues the deficits in basic education will remain very high.

The problem is one of coverage, with reference not only to the physical existence of the school but also to its accessibility and utilisation. UNESCO pointed out long ago that the greatest problem of primary education in Latin America was the attrition rate. In 1965 the average attrition rate in 15 countries of the region was estimated at 62 per cent. In 1960 the percentage was clearly higher than in Africa and three times greater than in Asia or Europe. Behind the attrition, however, are the high percentages of repetition resulting from problems rooted in the social conditions already described.

There is deep concern about the effects of such a diverse educational effort on the heterogeneity, already mentioned, of the economic and social structure of the region. It is feared, with reason, that the educational disparity will have 791

an adverse effect on income distribution, on marginality and, in brief, on the integration of society as a whole, forming a typical vicious circle with cumulative effects.

It is clearly impossible today to place the same hopes in a mere raising of the educational level as were entertained in times now remote, when education was expected to solve all problems, economic, social and political. The very high levels attained by some countries have not prevented the recrudescence of certain problems. Even so, the deficiencies and frustrations in the educational field weigh heavily in the complex interaction characteristic of the development process.

The expansion of education involved a serious problem of teacher-training which in general the region has managed to surmount in terms of numbers. Nevertheless, it has been accompanied by a certain deterioration in the quality of the teaching.

The desire to introduce policies for the groups at present inadequately served by formal education has produced efforts in two directions. The first is the development of types of non-formal education directed to these groups. The second is a set of reforms in primary and secondary education tending to modify both the teaching aspects and the use made of the resources. Among these reforms may be mentioned the successes achieved in the grouping of rural schools, the experiments with industrial schools, linking primary education to scientific elements and development, and the special training of teachers for single-teacher schools.

It should be noted that there has not been such evident success in surmounting the linguistic and cultural barriers that hamper training in the indigenous communities, although a solution seems possible by means of a bilingual education which would enable the official language to be mastered through the native tongue. At all events it is clear that some diversification of educational forms and systems would be necessary to reduce these pockets that are inadequately covered.

With regard to non-formal education, this has shown that it might replace formal education at a lower cost and achieve a high degree of community involvement. But it requires an official policy to promote it and prevent its being appropriated by the more prosperous groups.

The need for a vigorous public policy in education is imperative if the aim is to reach the outposts hitherto neglected and to prevent a further increase in heterogeneity. The experience of the countries that have not had this type of policy shows that in the course of time its absence creates a deficient educational situation in relation to the level of economic development.

# Policies on Habitat and Environmental Sanitation Services

The great problems of the Latin American habitat are linked with two major defects of the policies in this field: on the one hand, the failure to keep pace in the cities with the rate of urbanisation, being obliged to follow in the

wake of events; on the other, the failure to develop a reasonable capacity for penetrating the rural sector.

These defects are explained in part by the inadequacy of the institutional systems, conceived for static traditional societies or transposed from developed countries. Weakness on the part of local and intermediary authorities, lack of coordination, and conflicts of competence have been features of countries in which the state machinery has developed very rapidly in the interests of political and territorial unification.

They are explained in part also by the extreme limitation of resources and by the attempt to apply inadequate models taken from countries incomparably richer in relation to the size of the problems they have to face. In the housing field an attempt was made for a long time to 'eradicate' the marginal settlements, replacing them by housing estates built by formal industry. Among these mention should be made of examples of Neighbourhood Units conceived with an eye to the needs of children. But these were overwhelmed by the wave of marginality, without having reached the poorest sectors of the population.

The new orientations endeavour to achieve more extensive results by adopting a global view of the habitat, placing the accent on 'soft' technologies and revaluating spontaneous effort and local action. They focus policy emphasis on a more modest and realistic urban planning, on the management of land, on the creation of basic services and infrastructures (environmental sanitation, schools, basic health services), on the support of unofficial effort and on community participation. Environmental sanitation services, essentially a water supply and the disposal of solid and liquid wastes, are obviously assigned a high priority. The targets fixed at regional level for 1980 aim to supply potable water to 80 per cent of the urban population and 30 per cent of the rural population.

There is a noteworthy similarity between these policies and others relating to children, not only in their deliberate aim to enlarge their coverage in order to meet the needs of the great neglected masses by more modest means and standards, but also in their tendency to make use of local resources and the active participation of the community, which simplifies the integration of activities.

# Population Policies

The relation between population growth and problems affecting children is by no means simple. In one sense it has been shown that, when the average level of development is raised and especially when internal imbalances are reduced and living conditions improved (wich implies a definite improvement in most of the problems affecting children), there tends to be a spontaneous decrease in fertility and consequently in population growth.

There is another aspect, however, in which the relation is by no means so clear. The most popular argument is that a rapid growth of population tends

to be an obstacle to development and social progress, since it makes great demands on investment and throws a very heavy burden of unproductive child population on the shoulders of persons of working age. Nevertheless, the fact that in Latin America higher rates of increase in the population have tended to run parallel with higher rates of increase in the per capita product makes it necessary to treat this argument with great reserve. The problem is further complicated by the great differences between the individual countries, especially with regard to population pressure in relation to territory and resources.

A point to be noted is that in the countries of medium or rapid growth there is generally a much higher birth rate among the poorest sectors than in the rest of the population. This is a known fact, but it is not always remembered that this places a very heavy burden on these poor groups. Poverty in general brings with it pregnancies at an early age, many children born close together, a high death rate, undernutrition, premature child labour, school desertion, and all the later repercussions that have already been described, thus creating a vicious circle of problems which intensify poverty and increase the effort and sacrifices demanded of this group as a contribution to national development. It is probable that these phenomena also accentuate the internal imbalances of the development model. Even so, it should not be forgotten that in some cases a high birth rate forms part of the survival strategy of some types of poor families and that consequently their problems cannot be resolved solely in the field of fertility.

It is not surprising, in view of all this, that population policies have had different aims and have varied in the different countries of the continent.

Two viewpoints, however, have received ample support: the first is the right of the family freely to decide the number of its children with the greatest possible fund of information; the second is summed up by the governments themselves when at the Second Latin American Conference on Population of 1975 in Mexico they said that "the basis for an effective solution of demographic problems is first and foremostan economic and social transformation" and "the guidelines for action in the specific field of population require account to be taken of the nature of the structural roots of underdevelopment and of the dynamic of development." Other recommendations stress the importance of a multisectoral and integral approach to the problems of population and development.

In general the different policy orientations coincide in declaring, together with strictly demographic aims, their intention of helping to create the most favourable conditions for child development, to prevent the birth of children in adverse conditions, to increase the value placed upon the child, to avoid high-risk pregnancies, etc.

In the numerous countries that consider that the birth rate should be reduced the main specific instruments employed have been family planning programmes incorporated into maternal and child health services, course of sex and family education included in the curricula of basic and secondary education and, less frequently, legislation on responsible parenthood. Results have varied according to the social framework and the types of family. In general they have had limited success in rural communities, but they seem to have made an appreciable contribution to acknowledged reductions in the birth in marginal urban sectors.

As regards the demographic effect of the policies seeking to improve the conditions of children, there is a drop in mortality in the early years of life and an increase in the size of the final family and in the growth rate of the population. However, insofar as the situation of children is improved in other fields, such as education and the standard of living, the effect in the long run could be a decline in fertility.

Policies Relating to the Family

In general the policies designed to improve the situation of children have tended to ignore the family units to which they belong. At the same time, the policies relating to families have generally been confined to isolated aspects such as birth control or maternal and child welfare.

The family is the object of policies when it is recognised as a unit of social relations and an attempt is made to maintain it or modify it in its forms of constitution (age on formation, formalisation of unions, number of children, stability, etc.), its internal relations (husband-wife, parent-child, division of roles, means of communications, authoritarianism, *machismo*, etc.) or its external relations with society and the environment (work and income; educational, health and other services; housing and infrastructures; relations with the local community). There is little possibility of changing one of these elements if its interaction with the others is not taken into account. They all constitute the immediate social framework of the children or of any other member of the family.

Taking the family as an object of policies implies at least three things: a diagnosis of the problems worked out for the different types of family; the identification of modified family types in which these problems have been solved; and the coherent application of a set of policy measures to achieve the desired result. Some of the problems that have to be taken into account in these policies are connected with: the situation of women, practically converted into slaves, dedicated to housework and to some other task which provides them with a small income; the situation of men, failures in their socially allotted role of family provider or hidebound in male domination; the situation of children, workers from an early age and frustrated in their preparation for the future.

At the same time, the measures adopted may relate to a great variety of aspects (work and income, agricultural property, inheritance, legal adjustments of the family relations, health, housing, general and professional education, family education) without necessarily having an effect on the

family group as a whole. In this sense the policies concerning the family are not, save exceptionally, policies which fall in line with or complement the others, but rather forms or requirements which most policies have to fulfil in order to be able to change social conditions and especially the conditions of children.

Additionally, family policies may regard the family as a focal point (those concerned with the family in itself) or as a strategic point (as a means, for example, of reaching the children or women).

The adoption of effective action in this field demands, in view of the backwardness existing in Latin America, a very great effort in research, the collection of empirical information and policy consideration. This undertaking must include the preparation of a typology, much more comprehensive than the present one, of Latin American families, and in particular of problem families or those of high risk, because of their effect on children. The next task is to propose models of desirable change which would be viable for such families and to determine suitable policy instruments. This in no way assumes the taking of one of these family types as a pattern, or failing to recognise the inevitable diversity and uniqueness of family forms.

Some of the aspects which must be taken into account, perhaps to try to correct them in preparing the models, are: the age of the unions; their formalisation and stability; the illegitimacy rates; the situation of women; the situation of children; the relationships between husband and wife and the connections with society as a whole. These aspects by being considered by themselves, or because the effects of measures taken on them were not clearly foreseen, have given rise in this continent to unsuccessful or counterproductive policies. A minimum 'packet' of measures designed to produce a desirable change in the families in a coherent form would include:

- (a) provision of regular employment for the heads of households, with a sufficient income and near to the home;
- (b) health, education and housing programmes and infrastructures of basic services;
- (c) programmes of mass family education;
- (d) programmes of family organisation on the basis of the neighbourhood or local community; and
- (e) adoption of supporting measures of a legal nature within the framework of development planning.

Strategies Against Poverty and Policies for Children

Underlying most of the problems affecting children will be found social inequalities and poverty. It is a simple matter, of course, to point out some serious problems which stem from other causes. It is also possible to indicate problems which, although intensified by poverty, are curable through specific policies such as those related to health. Even so, the limits of these

improvements are soon reached. Policies to combat inequality and poverty and specific policies in favour of children are complementary and mutually necessary.

In the context of the unified approach to development, various strategies for combating poverty have been proposed. Some of them place emphasis on full employment, others on growth with income redistribution, others on more radical structural changes. In one way or another all these strategies imply a set of coordinated actions designed to satisfy the basic needs of the whole population, or at least to place the whole population in a position to satisfy them independently.

Among all these basic necessities are those of children. In this sense policies in favour of children form a natural part of a strategy to combat poverty. Deficiencies suffered by children in nutrition, health, early stimulation or education are handicaps which bear heavily on their future adult life. Through these handicaps poverty reproduces itself. The vicious circle cannot be broken without a set of specific and energetic policies directed to the relief of the miseries of childhood.

#### TRENDS AND STRATEGIES

Expected Growth of the Child Population

In what remains of the century the population of Latin America will continue its vigorous growth and the proportion of children will remain high. In consequence, the child population (from birth to 14 years) will rise at the beginning at the rate of 3.3 million per year, to increase towards the end of the century at the rate of 3.9 million per year (the annual growth rate will be 2.2 per cent at the beginning, decreasing at the end to 1.7 per cent). In all, the number will rise from 150 million in 1980 to 226 million in the year 2000. It is expected that there will be a greater increase in the number of adolescents than in the number of young children.

The total of births per year will increase from the present 12 million to around 17 million at the end of the century (at an average rate of 1.65 per cent annually; at the beginning at 2.1 per cent, at the end around 1.3 per cent). On average each year will bring 240,000 more births to be attended.

The growth of the 6-12 year school-age population will be considerably greater (average 2.25 per cent annually). The 64 million in 1980 will become 100 million in the year 2000, which means an average increase of 1.8 million per year. The pre-school groups will grow at rates between those of newborn infants and schoolchildren. The coverage of the services is so low at this level that it seems futile to make detailed predictions about their growth. Taken together there will be in 1980, in addition to the 12 million children aged under one year, 33 million aged from one to three years and 21 million from four to five years, a total which will increase by roughly 50 per cent during the remainder of the century.

These increases will naturally have a marked influence on the needed expansion of services for children. Taken together, they should increase, for this reason alone, by around 2 per cent annually. Nevertheless the real expansion rate will have to be much higher in view of the present deficits in coverage. One of the services with relatively high coverage is the primary school. It can be estimated that at present it serves some 85 per cent of the 64 million schoolchildren, which amounts to 52 million. If the aim were to absorb the deficit by the end of the century, the primary school services would need to incorporate annually, instead of the 1.8 million additional children representing the population growth, 2.4 million children. To absorb the deficit in ten years it would be necessary to incorporate annually an additional 2.8 million.

Obviously the growth rates of the child population will continue to be very unequal in the different subregions and countries. In the Caribbean the number of children in the 0-14 age group could fall 8 per cent by the year 2000. In Cuba it could remain stable. There are likely to be increases of less than 20 per cent in Argentina, Chile, Panama and Uruguay; between 20 per cent and 40 per cent in Colombia, Costa Rica and the Dominican Republic, between 40 per cent and 60 per cent in Bolivia, Brazil, Guatemala, Paraguay, Peru and Venezuela; and between 60 per cent and 80 per cent in Ecuador, El Salvador, Haiti, Honduras, Mexico and Nicaragua.

Table 1 (p. 798) shows the child population of Latin America by countries for 1980. Figures are given for different age groups corresponding roughly to certain types of policies and services. Table 2 (p. 799) shows, country by country, the expected changes in the child population by the year 2000.

The trend of rapid urbanisation will continue. The urban population in the coming years will increase at the rate of 8 million annually, while the rural population will grow by 1.3 million. Apparently, this gap will become still wider towards the end of the century, when urban growth may reach 12 or 13 million per year. By that time the rural population will have increased by 25 per cent and the urban population by 140 per cent in relation to 1975.

This has a marked repercussion on the demand for services. A 25 per cent increase in population will have little effect on the rural areas. There the service problem is one of quality and accessibility, not of saturation. The actual deficit in coverage is basically the same as would have to be met in the decades to come, apart from some newly settled areas or places where density had accelerated. Dispersion will continue to be the major obstacle. In contrast, the problem in the cities is at the same time one of quality and saturation. There the volume of population to be served will increase by 2.4, with a simultaneous growth in urban spread and in the number of cities exceeding the fixed critical limits. Thus the problem of present deficit is a minor one compared with the needs deriving from growth.

Obviously these statements must be interpreted in relation to the inequalities between countries and subregions. In Argentina, Chile, Uruguay and Venezuela there are likely to be reductions in the rural population in absolute

TABLE I LATIN AMERICA — CHILD POPULATION BY COUNTRIES IN 1980

	Total	l 0-14 year	rs	Ву	selected age g	roups
Country	Number	% of total popul.	Under 1 year	1-3 years	4-5 years	6-12 years
Argentina	7,637,624	28.0	557,542	1,627,539	1,054,239	3,463,083
Bolivia	2,440,177	43.8	199,839	563,831	348,030	1,064,688
Brazil	52,400,267	41.5	4,248,507	12,017,793	7,447,358	22,925,243
Chile	3,613,396	32.5	272,571	754,835	473,547	1,631,712
Colombia	10,868,839	40.4	880,788	2,388,941	1,441,618	4,793,662
Costa Rica	838,289	37.9	61,810	173,075	108,312	382,25
Cuba	3,189,998	32.0	168,056	543,790	402,432	1,594,027
Dominican Re	p. 2,659,614	44.8	188,894	562,818	367,144	1,220,662
Ecuador	3,563,668	44.4	304,377	837,959	503,941	1,531,533
El Salvador	2,168,055	45.2	183,832	509,848	309,408	933,335
Guatemala	3,201,004	44.1	266,473	744,585	458,126	1,387,057
Haiti	2,530,540	43.6	210,252	587,827	359,068	1,098,499
Honduras	1,765,177	47.8	154,504	425,162	254,214	750,310
Mexico	31,748,136	45.4	2,726,528	7,517,378	4,543,391	13,597,090
Nicaragua	1,312,580	48.0	112,416	312,773	190,262	561,976
Panama	754,821	39.8	53,766	160,500	105,110	345,354
Paraguay	1,359,241	44.4	111,486	312,962	191,633	593,061
Peru	7,549,365	42.5	617,047	1,721,681	1,050,798	3,302,857
Uruguay	795,155	27.2	56,417	165,363	108,755	364,350
Venezuela	6,199,698	41.5	525,850	1,422,983	854,451	2,678,113
Latin America	146,595,644	40.9	11,900,955	33,351,643	20,571,837	64,218,863

terms, but in proportions less than 30 per cent, which would have little effect on rural services. The countries in which there could be rural population increases of over 50 per cent by the end of the century in relation to 1975, are Bolivia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras and Paraguay and in no case are they likely to exceed 71 per cent.

With regard to urban growth rates, they vary from country to country between 28 per cent and 323 per cent, but the population explosion in some individual cities will far exceed this rate.

# Economic and Social Trends

If the trends described above show some stability, those of economic development are much more open to conjecture. Many different hypotheses can be formulated on the magnitude of the advances to be achieved in what remains of the century. Economic growth in Latin America, which halted midway through the decade in the course of a crisis affecting the pattern of world development, has recommenced in recent years, but at a lower rate than in the past. Accordingly there are no stable trends that can be projected automatically. The only possibility is to confine the forecasts within very rough-and-ready limits based on past experience going back several years.

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Country	1980	2000	Difference	Variation %
Argentina	7.6	8.2	0.6	8
Bolivia	2.4	3.8	1.4	57
Brazil	52.4	79.3	26.9	51
Chile	3.6	4.2	0.6	16
Colombia	10.9	14.9	4.0	37
Costa Rica	0.8	1.1	0.2	28
Cuba	3.2	3.2		
Dominican Rep.	2.7	3.3	0.7	25
Ecuador	3.6	6.0	2.4	69
El Salvador	2.2	3.5	1.4	63
Guatemala	3.2	5.0	1.8	57
Haiti	2.5	4.3	1.8	67
Honduras	1.8	2.9	1.2	67
Mexico	31.7	55.9	24.2	76
Nicaragua	1.3	2.3	1.0	73
Panama	0.8	0.9	0.1	19
Paraguay	1.4	2.1	0.7	54
Peru	7.5	11.2	3.7	48
Uruguay	0.8	0.9	0.1	13
Venezuela	6.2	9.1	2.9	48
Latin America	146.6	222.3	75.7	52
The Caribbean	4.1	3.8	-0.3	<b>—8</b>
Total	150.7	226.1	75.4	50

It seems reasonable to assume that the gross product per capita will increase for the region as a whole at a moderate rate somewhere between a cumulative annual 2 and 3 per cent. In contrast, it is probable that the growth rates for individual countries will vary between 1 per cent and 4 per cent annually. According to these hypotheses, the broad results would be as follows:

- —The average level of the per capita GDP, estimated in 1977 at \$ 800 (1970 dollars), could rise by the end of the century to a figure between \$ 1,200 and \$ 1,600.
- The gaps between countries could widen. Even so, it may be hoped that only a group of small countries with no more than 10 per cent of the total population would still remain below \$600. According to the pessimistic view, a third of the countries, with two-thirds of the total population, might have gone beyond \$1,200. According to the optimistic view, half the countries, with 80 per cent of the total population, might have passed that limit. In the one case, those that had achieved \$2,000 would be the exception; in the other case, they would represent a minority, but a significant one.

It should be noted, however, that these predictions are reasonable only if the slow growth of the last three years is, as it is thought, a transitory phenomenon and if Latin America soon recovers, at least partially, its former dynamism. If it were to become a permanent feature of the new international relations, obviously these hopes would crumble.

Whatever these conjectures may be worth, it can be affirmed that:

- (a) Unless there is a development very different from the hypotheses on economic growth in the region, most of the countries should, from now to the end of the century, reach levels at which, if and when they have achieved an adequate income distribution and adopted effective social policies, a large number of the most critical problems of children could be solved; and
- (b) Nevertheless, considering the low growth rate and the present economic difficulties, substantial changes cannot be expected in the short term, which makes it necessary in many cases to devise policies based on modest resources.

# Income Distribution and Poverty

In this respect the trends are much more disturbing. Apparently the average levels rise while leaving the poor sectors behind; the strata in varying situations of poverty maintain their percentages and, therefore, increase in number. At all events they do not decrease. Meanwhile, the upper strata and ever growing sectors of the middle strata achieve the levels and consumption patterns of developed societies, creating an internal imbalance which is constantly increasing.

This is a serious matter, since income distribution is already very unequal in the region. From the standpoint of the problems of children, it nullifies to a great extent the results of the economic growth, since poverty generates problems which the best policies and the best services cannot solve.

Among the causes affecting these adverse trends there are several which show no signs of diminishing. These include: the structural heterogeneity of the economies in respect of productivity and technology; the inadequate distribution of productive factors such as land; unemployment and underemployment; the margination of large sectors in respect of education and health care; the inequalities of influence and bargaining power; and the weakness of redistribution policies.

### Food and Nutrition

The figures relating to food availability and consumption, especially those showing per capita calorie intake, reveal a slow trend towards improvement. There has been some decline in the number of countries with overall insufficiency and in the proportion of the deficit. Even so, the trend is not satisfactory, since it is too slow and some of the countries with major problems

are making little progress.

The difficulty in general does not lie in the overall capacity of food production, except in some cases where there is high population pressure in relation to the available land. In these cases the pressure on resources tends to increase. With these exceptions, however, the problem lies in the capacity of certain social groups to gain access to the food supply and to generate an effective demand that would increase production. This occurs in the agrarian subsistence economies tied to the small farm, where monetary income is non-existent, and in the strata with a minimum monetary income.

However, as there is no sign of a solution to these two problems, there is likewise no tendency on the part of the economy to generate a substantial improvement in food supply and consumption.

In the particular case of children, whose nutritional conditions are closely linked with the family and the social situation, improvements depend on the success of specific nutritional policies and programmes, which vary from country to country and in general are very limited in scope.

There have been some changes for the better in the hygienic and nutritive quality of children's food, although by themselves they cannot solve the problem of accessibility. Other changes, such as the gradual decrease in breast-feeding in urban areas, prompted by female labour and cultural influences, only serve to aggravate the situation.

# Health

There have been some positive advances in health, which can be measured by the fall in the mortality rate and the increase in life expectancy. It is to be hoped that this improvement will continue, since the figures for preventable diseases and causes of death are still high and there is still a long way to go in improving the quality and coverage of the services. The urbanising trend facilitates the improvement of the averages, and the general concern to raise the quality and broaden the coverages is firm and is expressed, through planning, in programmes which are on the whole tending to increase.

Nonetheless, there is little progress in the effective penetration of the health services into rural areas, and this has led to the current experiments with new strategies such as primary health care and integrated services, which are expected to achieve a marked improvement in performance. It must not be forgotten, however, that the existing trends in the economic, social and environmental variables will continue to have a strong negative impact on health, thus limiting advances in this field.

## Education

The trend towards rapid expansion in secondary and higher education continues. Although higher education tends to saturate the employment market in some countries, social pressures in favour of the expansion of both levels of education will remain.

In primary education the outlook is different. In some countries, which have already achieved the coverage of their needs, growth will be slow and in line with the population increase. In others, which still have deficits to cover, the expansion rate is unequal and often insufficient. These deficits are due in declining measure to failure to provide the service and in increasing measure to the difficulties stemming from social conditions: poverty, child labour, the linguistic and cultural problems of indigenous populations, etc. Accordingly, there is a dangerous risk of the persistence of geographical and social pockets where educational advances could be too slow. At the same time, with the raising of educational levels as a whole, the effects of the deficiencies in basic education might be graver and might intensify margination.

In view of these difficulties new forms of primary education are being studied and put to the test, and state policies are being reassessed.

### Habitat

The rapid advance of urbanisation will have a delaying effect on reform in rural communities. The expansion of road networks and communications tends to put an end to total isolation, to reduce the socio-cultural gap, to facilitate migration and to create opportunities for new forms of activity. Nevertheless, physical dispersion in isolated dwellings and small communities will continue. The coverage of some services, especially the water supply, will continue to increase, but with a tendency to leave large deficits behind. Limited improvements in housing conditions are expected.

There is little attempt to control the growth of cities. It is probable that spontaneous urbanisation and improvised building at the hands of the poorest sectors will continue to play a fundamental role, creating problems similar to those existing at present. Deficiencies in environmental sanitation tend to remain very high, although major percentage advances in water supply may be expected. The older decaying suburbs will gradually expand as the middle-and high-income groups seek a new residential environment.

The problems of congestion and contamination threaten to assume alarming proportion in the great cities and industrial centres, while there is a persistent trend towards the creation of forms of urban habitat that are very hostile to children.

# Submerged Categories

It seems that, as far as the tribal indigenous population is concerned, the trend is rather towards its extinction than towards its integration or preservation.

With regard to the indigenous populations living in urban fringe areas, in many countries they will continue to be an important part of the phenomenon of urbanisation and there are no clear indications that their problems will diminish. Neither is there any approach to the solution of the problem of the indigenous agricultural communities.

For the agricultural communities as a whole, it seems that the entry of communications and transport will continue to go hand in hand with the introduction of modern patterns of production. Insofar as poverty, shortage of land, lack of economic and technical support and cultural problems prevent the rural populations from taking part in these, the new productive pattern will disorganise the traditional forms, reducing the land-workers to the condition of wage-earners or migrants. In mountainous regions or others with low productive capacity, the small subsistence farm will remain. Consequently there is no prospect of a solution to these problems.

No major changes are foreseen in the situation of the inhabitants of marginal urban districts except perhaps a drop in fertility in many of them. To achieve substantial improvements a great expansion in employment would be needed in economic sectors of high or medium productivity, which would absorb surplus labour from the informal sector. Moreover, a great improvement would be necessary in the distribution of income, including the formal sector. There are no trends observable in these directions.

Some Orientations of Strategies and Policies Relating to Children

The recapitulation that follows is not a blueprint for strategies nor yet a piecemeal statement of recommendations. It is simply an attempt to summarise the conclusions arising from a study of the situation of children in the current process of Latin American developments and its sole purpose is to facilitate reflection on these conclusions. In particular, it does not take into account the specific conditions applicable to individual countries, or the diversity of options existing in the region in respect of strategies and instruments.

Whenever the subject is considered, children are assigned pride of place as beneficiaries of the fruits of development. Their preventable deaths, the hunger they endure, their diseases, their neglect, their unnecessary psychological sufferings and the untimely sacrifice of their future potential—all these evils provoke unanimous condemnation and unify proposals for their eradication.

In recent decades, Latin America has achieved ambitious goals. Nonetheless, there remains for children an all too tragic balance.

Today, in a unified approach to development such as that supported by the Latin American community, the life, health and well-being of the child are essentially conscious and explicit objectives. Accordingly it is also an explicit objective to remove the causes producing the tragic balance: extreme poverty, the margination of the submerged categories, the sordidness of their living conditions and the inadequacy of the policies adopted.

This makes the existence of a strategy for children imperative. This strategy should be incorporated into development planning. For this there must first be effective social planning. This brings into prominence the conviction that the governments have reached in recent years as to its

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necessity, and requires a consolidation of the institutional development observable in the form of organs of social planning, research and implementation, progress in methods and advances in the training of personnel.

The specific problems of children must be taken together for the purposes of study and the formulation of a strategy, which should be incorporated into the objectives, policies, and programmes of the planned development. It is fundamental to implement the strategy in terms of coordinated action and to maintain progress in methods of control and assessment with techniques suited to the social nature of the programmes.

All policies aimed at extreme poverty have for this very reason a positive impact on children. It is desirable, however, to take children expressly into account when assessing, in order to minimise, the social cost of these policies. Policies specifically directed to children are excellent in the struggle against poverty, since extreme poverty reproduces itself through the privations it visits on the children.

Policies to combat poverty cannot function solely at the economic level, nor can they be aimed at isolated individuals. They must have a very special regard for the social problems of the submerged groups and categories. Deserving of special mention among these are the problem families and the conditions determining their situation, the social and cultural problems affecting the indigenous communities and the influence of the physical environment on the isolated rural communities and the marginal urban settlements.

In many fields, experience has led to an integration of activities and services replacing the tradition of isolated sectoral action. This is due in part to the fact that problems such as food, health, environmental hygiene and the habitat, employment, education or productive resources are so interrelated that progress cannot be achieved in one field without some advance being made in the others. It is also due to the difficulties encountered by each service in covering satisfactorily the social pockets where the greatest problems are found. The integration of services makes possible large scale economies and a participation by the community that enlarges the efficacy of the work done.

Food and nutrition policies should centre on the production of foodstuffs and their availability, accessibility, consumption and biological utilisation as forming part of a system. This makes it possible to go to the causes, to decide what action must be taken on the bottlenecks, and to function in a multisectoral way. At the local level integrated action is recommended, with the participation of the community, with a view to giving priority to child nutrition administered on a family basis. Considerable importance is given to support for research and training.

Top priority in the health services is assigned to total coverage. This is expressed in the emphasis placed on primary health care, including education and direct action, with the help of local personnel having intermediate or elementary qualifications and with the participation of the community. This

type of care seeks to take the family as unit, fixes priorities in terms of risk criteria, and assigns fundamental importance to nutritional conditions, environmental sanitation, preventive rather than curative measures and social conditions, in order to overcome the obstacles to traditional medicine found in this type of environment. In this approach, special attention should be given to the training and full utilisation of human resources.

The conviction exists that a great deal of harm, perhaps irreversible, could be prevented by vigorous action directed to children at pre-school ages, especially those belonging to the high-risk groups and submerged categories. This action should not be merely educational or solely preparatory to going to school. It should take the family and the mother as strategic targets and cover food, health, early stimulation and integrated action on the social conditions.

Very vigorous policies will be required to hasten the penetration of primary education into the social pockets where coverage has been deficient. To achieve this it is necessary to add to formal education the possibilities of the informal type and to motivate, to act on the social conditions that generate obstacles such as premature child labour, to develop effective methods of bilingual education and to reform the techniques and increase the resources of primary education.

A strategy for the improvement of the marginal habitat is essential. Even if a much greater volume of material and technical resources is provided, it cannot take the place of the spontaneous effort of the people. The resources should be allotted to the support of this effort, especially the organised participation of the community. The priority given to water supply and environmental hygiene must be intensified. It will be necessary to learn to administer land planning and policies, anticipating events by assisting the creation of a more humane pattern of urban life.

There is a need for a new and more clearly defined statement of the aims and procedures of the policies for local community development, with a redistribution of resources and responsibilities. The problems of children are greatly affected by concrete local conditions; they require local participation and are capable of motivating it.

Special attention must be focused on the family and a study made of its forms and problems, if the conditions of the children are to be better understood. Imaginative policies are needed to help to surmount problematical situations. Particular interest should be directed to the circumstances of the mother. While direct action on behalf of abandoned children should be maintained, it must be remembered that the only real rescue is the rescue of the child with his family, and the only way to ensure this is to prevent its breakup.

Each country has its individual problems and it is the responsibility of each to work out its own strategy. In what remains of the century, the persistence of present conditions will mean 30 million child deaths; a similar number

of cases of serious malnutrition which could result in permanent suffering or the risk of premature death; and an even greater number of frustrated lives, of children robbed of their childhood and cast into the world without the necessary support and preparation. This might occur or it might not, according to the result of the strategies described.

It would be criminal not to say this in time.

### THE ROLE OF INTERNATIONAL COOPERATION

The international agencies should make an even greater effort and lend their whole support to the challenge of solving the problems of children in Latin America and the Caribbean. It would be an unjustifiable mistake if these agencies, following abstract economic indicators referring to national averages, were to regard Latin America as a world 'middle class' that could dispense with their cooperation. After helping to analyse and understand the problems of social development they could not fail to realise that the task facing these countries of overcoming the internal inequalities and imbalances, the regional backwardness, the marginality and the poverty which make averages a sham, is as difficult on its own scale as creating a just international order.

For the realisation of this enlarged endeavour the region possesses its own network of institutions for collaboration between countries in the field of economic and social development and even in respect of children. Although it may perhaps be necessary to complement it, it is already a very valuable instrument that should be fully exploited.

Particular importance should be assigned to technical and financial assistance in support of research, experimentation or execution of policies for the improved upbringing, preparation and development of children. Special priority should be given to actions designed to break the vicious circles maintaining inequality and to produce structural changes which would, reduce social heterogeneity and eradicate extreme poverty.

To achieve this, the transference of scientific and technological knowledge continues to be a basic instrument. Today, however, this transference does not invariably involve the need to resort to experts and technicians from outside the region. Many countries of Latin America and the Caribbean now possess personnel and organisations highly qualified in certain specialities. If a comparison is made between the present situation and that existing at the start of the 1950s, when the United Nations began its work, it will be seen that the universities and other institutions of these countries have formed, in sufficient quality and quantity, professionals and technicians prepared to serve their own national communities. This is particularly true in areas of social development such as public health and education. The recognition and stimulus of international cooperation can help to mobilise these resources.

The organisation of 'horizontal cooperation' among Latin American

countries and among developing countries may also satisfy a considerable part of the needs, though this does not imply leaving international cooperation on one side. This is another field in which external resources and cooperation may facilitate understanding and assist the initiation of programmes of differing character, magnitude and content.

Furthermore, there are now in the region—and their number will increase in the coming years—more expeditious and better organised institutions and mechanisms in the respective governments, especially those of a technical or administrative nature concerned with national planning. As a result, the dialogue between the governments and the agencies of external cooperation may become more active and may facilitate better understanding and the surmounting of some earlier problems in the sphere of coordination, determination of priorities and allocation of resources. At the same time, the 'programming by country' approach that the United Nations has been developing in the last decade for a more efficient channelling of external aid will also strengthen and give practicality to these objectives.

# Plan of Action in IYC

India has formulated a national plan of action to observe International Year of the Child. The plan was finalised in the meeting of the National Children's Board held in July 1978 under the presidentship of the Prime Minister. Programmes under the plan cover the following six fields: (i) health and nutrition including environmental sanitation and supply of safe drinking water; (ii) education including pre-school, elementary and community education; (iii) social welfare; (iv) legislation; (v) publicity; (vi) fund-raising.

The measures contemplated in the plan are being taken by different departments of the Government of India and the States.

—Annual Report, 1978-79, Ministry of Education and Social Welfare, Government of India.

# Child Labour in Asia: An ILO Survey

IT IS gratifying and educational for a child to perform light, occasional work of the kind he does in his own home from an early age. But work performed by children at a tender age under arduous conditions because of an imperative need to contribute to the family budget—whether on their own account, as employees or in family enterprises—is harmful for their present and future physical and mental health.

It is estimated that in 1979, 52 million children under 15 years of age are working all over the world: 38.1 million of them in Asia (mostly in the South East: 29 million), which occupies the first place in this respect. Of the 38.1 million children working in Asia, 29.6 million are unpaid family workers.<sup>1</sup> However, there are various reasons for believing that these figures are underestimated, as child labour in Asia is very widespread. Children work chiefly in agriculture, but also, to an increasing extent, in the towns, as a result of the rapid urbanisation of the past few decades, mainly in the informal sector (netty commerce, service) but also in factories. Those who are paid usually have to put up with highly unsatisfactory working conditions. Living conditions in general, as well as sanitation, nutrition and the level of education of children who work are generally very poor. Moreover, these children do not have enough opportunities to play nor to take healthy exercise; they cannot develop their mental capacities to the full; at their places of work they usually only learn the barest rudiments of an occupation; they become over-tired. lowering their resistance to all kinds of illnesses; when they work in the streets they run great risks (traffic hazards, bad company, vagrancy, prostitution, drug addiction, etc.), and they are more exposed than adults to the risks of occupational accidents and diseases, as well as to health problems of a more or less chronic nature or not easily curable (the possibility of stunted growth. deformation of the spinal column, skin diseases, tuberculosis, flat feet, etc.).

Broadly speaking, it may be said that all the obstacles inhibiting the satisfactory development of children who work exert a decisive influence on their future opportunities for employment, remuneration and social advancement; worse still, vegetation in a rapidly developing world implies physical, spiritual and social deterioration.

Despite this state of affairs, international instruments and national laws do exist to protect children against exploitation. ILO convention No. 138 of 1973, concerning minimum age for admission to employment, stipulates,

<sup>&</sup>lt;sup>1</sup>Data from the Bureau of Statistics and Special Studies of the ILO.

inter alia, that the minimum age for admission to employment must be raised progressively to a level consistent with the fullest physical and mental development of young persons, and that this age must not be less than the age of completion of compulsory schooling, and in any case not less than 15 years, subject to the proviso that member states of the ILO whose economy and educational facilities are insufficiently developed may specify a minimum age of 14 years. The convention also provides for the authorisation of the performance of light work by young persons of from 13 to 15 years subject to certain conditions, and stipulates that young persons under 18 years of age must not be allowed to perform work likely to jeopardise their health. safety or morals. Fourteen countries have ratified this convention so far, but no Asian countries are among them. Nevertheless, the majority of countries have adequate protective legislation, which signifies that the child labour which is so widespread in Asia is for the most part exacted illicitly and, what is more, under conditions which do not fulfil the requirements of this protective legislation.

### CHILD LABOUR IN INDIA AND INDONESIA

In India,<sup>2</sup> the problem of child labour apparently may seem to be a product of such factors as customs, traditional attitude, lack of schools or reluctance of parents to send their children to school, urbanisation, industrialisation, migration and so on. But the extreme poverty, and agriculture as the main occupation of the majority of people in India, are the main causes at the root of the problem.

One obvious reason for engagement of child labour is that it is very cheap and is also readily available in the agricultural and rural sectors. In plantations it takes the form of work as part of a family group. The parents do the main field work and children assist them in plucking the leaves, coffee berries or collecting latex, or they do secondary jobs such as weeding, spreading fertilisers, etc.

In many situations boys and girls, especially girls, have been observed to be working even at an early age of 6 years, but the usual age at which children start working seems to be 8-9 years.

Further, many children between the age of 8-9 years are bounded as labourers against petty loans taken by their fathers, despite the prohibition of bonded labour under Article 23.1 of the constitution and the Government of India's active drive to abolish this practice during 1975-76.

Generally in family endeavours like agriculture and agro-industries, child labour is unpaid.

<sup>2</sup>Data taken from Gangrade, K.D., "Child Labour in India", New Delhi, 1978, Monograph specially commissioned by the ILO.

Hawking, shoe-shining, paper selling, collection of scraps, rags, riksha pulling, petty business, etc., are the activities where children are self-employed.

Some studies give a harrowing picture of the working conditions and envi-

ronment in which children have to work.

The tea stalls and 'dhabas' (road side restaurants) where children work are often small. The children working in these shops are exposed to the vagaries of weather—rain, hail and scorching sun, as they have to work mostly in open without adequate clothing or footwear.

The hawkers' and shoe shiners' work place is usually pavement in the cities or railway stations and bus stops. Their housing conditions are not much

different from those of other slum-dwellers.

The nature of work and the work environment are invariably the most unhygienic for the children working in the trade of collection of rags and other waste material. Even in the most severe winter, children are seen working in the open without a single sweater or other protection.

The data of the available studies indicate beyond doubt that the hours of work even in establishments are excessive and certainly beyond the capacity of a child less than 14 years of age.

The Labour Bureau found that in small industries and cottage industries, such as watch manufacture, cashewnut processing, bidi making, carpet weaving, etc., employment of under-age children, either uncertified or having alse age certificates, continues. The actual hours of work were found to be in excess of the prescribed hours under different enactments. In cottage industries, children were required to work as long as adult workers, except where 'home work' system was prevalent. The working conditions for children in the bidi and glass industries continued to remain deplorable.

In unlicenced dhabas and tea stalls children often work more than ten hours a day. So is the case with domestic workers. The usual working hours of children are between 9 to 10 hours allround the year with a rest interval of one hour between 13:00 to 14:00. However, establishments mostly provide weekly offs at least on paper. In household enterprises the daily hours of work vary from 7-16 hours.

In Indonesia,<sup>3</sup> children (boys and girls) under nine years of age perform any work usually in the service sector, for a little pay or for some food/clothes. In the cities children are usually employed in shoe-shining, cigarette and newspaper selling. This business is done at permanent places or by circling. Usually it is done by boys of twelve years of age. Vending of ceramics, foods, drinks, etc., by boys, sometimes under twelve years of age, and medicine, drinks, rice, etc., usually by girls (almost fourteen years of age and older) is found in Jakarta and other cities. The goods are usually prepared by the parents.

<sup>&</sup>lt;sup>3</sup>Data taken from Soeratno, F., "Child Labour in Indonesia", Jakarta, 1978. Monograph specially commissioned by the ILO.

It becomes clear that there are no statistics available (officially or unofficially) and there is no percentage for the number of children employed as compared with the total child population and the total labour force. But it is felt that the number of children working in the small-scale industry is declining.

But from the other side the number of small businesses or self-employment on one's own account is increasing.

Mostly on the outer islands (other than Java) children are employed at plantations.

Traditionally children help their parents (workers) or are employed at home, of course, without pay.

Wages are usually paid in kind, food, lodging and clothes, in family undertakings.

In several factories where the work relation is based on contract, the agreed working time is voluntarily not observed. It happens in the cigarette industry that girls work from 5 a.m. until 5 p.m. with a break of one hour at noon.

It is observed that the wage of a child performing the same work as an adult, is not on the same level as that of the adult (usually 70-80 per cent).

Attendance at school is formally compulsory, but the lack of learning-opportunities is the predominant reason for parents to send their children to work. It is in fact not because of the reluctance of parents to send their children to school, but only the shortage of schools.

### CHILD LABOUR IN PAKISTAN AND THAILAND

In Pakistan,<sup>4</sup> for example, a higher child labour force participation rate is reported for rural areas than for urban areas. The higher participation rates of agricultural labour force right from the youngest age group to the older ages are primarily due to the fact that agriculture in Pakistan is generally a family enterprise involving both the young and the old members of the family. The younger children are mostly involved during the sowing and harvesting seasons. Further, agriculture is not mechanised on a wider scale so as to substitute the children with machines.

Children are tagged along by adults—(fathers, uncles) for the sake of apprenticeship in the small industries.

Most children all over Pakistan work in the carpet industry (hand-woven). Weaving carpets is a family occupation transmitted from generation to generation.

The organisation of work in the carpet industry is of two types: informal, at home, where family children are easily absorbed; formal, where the

<sup>&</sup>lt;sup>4</sup>Data taken from Hafeez, S., "Child Labour in Pakistan", Karachi, 1978. Monograph specially commissioned by the ILO.

industrialist has his own looms installed at his factory. In this case the adult weaver in turn brings along his own children ranging from 8-12 years of age. However, the formal work relationships, i.e., wage payment, etc., exist between the employers and the adults. The adult splits the portion of his wage with his children. The mode of payment to the adult worker is usually piece rate, i.e., per foot. Approximately 40-60 rupees per foot is the rate depending upon the quality of the carpet.

From the children's point of view, one advantage for working under such work environment is that they are not strictly watched by the employers, they are not expected to conform to rules and procedures as the adult workers are. In this context, the children with their soft and small hands can give good and tight knots. Their grips are nice. Carpets with good and tight knots are sold at a higher cost for such carpets just last longer.

As export demand for carpets is very important, the Export Promotion Bureau does not want to discourage the child labour in the carpet industry. Export demand is higher than the availability of labour in the carpet industry, so children also make up for the shortage of labour in this industry.

Furthermore, a family with many children and relatively lower income cannot afford to send their children to schools, so they prefer to have them work. Some orphans also work in the carpet industry. Finally, children work faster than adults, so more work gets done in fewer hours. With the children, time for work is economised.

The employer's advantage is that they deal with only a few persons. The fewer the persons in a factory, the lesser the burden of enforcement of law. They do not have the burden of enforcing the law in the case of the children. They do not have to deal with the leave cases of the children. The adult worker's advantage is that he is not victimised. He gets more work from children on less wages.

In the carpet industry, dust from wool gets absorbed in the lungs of workers and causes tuberculosis. Children often do not use masks.

Shoe industry is another where goods are exported and where there is a shortage of skilled workers. Children's training on the job, however informal, is completed within two or four years. They receive special training in preparing the specific parts of the shoe and the whole process of shoe-making as well. It is in a sense a family occupation again.

Children have been exploited mostly in the construction industry or digging industry. They are abducted and confined in camps. They are strictly watched and severely punished and humiliated if they try to escape.

The number of children in the textile industry, at least in Karachi, has gone down since 1969 when some active trade unions proposed that the wages to children equal to that of adult may be given in exchange for their work which the leaders thought was of adult's level. This proposal of unions was not of course acceptable to the employers.

In Thailand,<sup>5</sup> during the past 4-5 years the number of children coming into town has risen to hundred thousands. These children are both boys and girls with no education and no experience. They mostly come from the highland in the northeast.

The industrial sectors where the children are employed include the glass industry, the canned food and candy industry, the garment industry, the cold storage industry, the torch-light industry, the ornaments industry, the toys industry, the metal industry, etc. They also work as waiters, street vendors, etc.

Working children at the glass industry have to walk from end to end to move glasses. Another assignment is glass blowing and glass pressing. They are easily exposed to heat and scattering glass pieces. On average, the working hours are 7 to 8 hours a day. The holidays fall on Sundays but children are not paid for Sundays because they are employed on a daily basis.

Most children live in nearby areas and they come to assist their parents until they have enough experience. The pay is lower than an average standard.

In case of accidents such as cuts, first-aid is provided.

The cold storage industry employs a great deal of child labour. The children at work are aged from 12 to 15. The pay is based on hourly and monthly basis. And the basic work is in connection with sorting out the sizes of seafood such as prawns and squids. Children also clean, pack and weigh seafood. Sometimes, they have to steam prawns before packing. The floor of the factories is flooded due to seafood cleaning and the children have to stand working all the time on it.

In the canned food industry the work is mainly packing. The place is crowded and unclean. The lighting and airing system is poor. There are no fans. Both employers and employees do not take any consideration of working rules and regulations. The pay is based on monthly and daily basis. The work is fast and continuous even without rest or relaxation. They usually overwork, in order to get more pay.

Most waiters and waitresses are between 12 and 15 years old. Their working hours vary from 9 to 11 or 12 a day. The street vendors are both boys and girls, aged between 10 and 15; most of them are schooling and take the job as a past-time. The income is high. The favourite places for these children are the traffic-congested areas, the inter-sections, the movie-houses, etc. The work is popular in spite of its risky nature.

The lowest monthly child wage is 150 bahts, the maximum wage is 550 bahts. The difference between the child wage and the adult wage is 15-20 bahts a day or 200-250 bahts a month. Though the children get less wage, they never petition any claim. Moreover, they have no collective bargaining power. The employers can treat the children as they like.

<sup>5</sup>Data taken from Prachankhadee, B., et. al., "Child Labour in Thailand", Bangkok, 1978. Monograph specially commissioned by the ILO.

#### CONCLUSION

The present socio-economic situation in Asia offers very difficult living conditions for the majority of the population; one of the many effects of this system, which does not allow the masses to satisfy their most elementary needs, is that children are put to work at too early an age in order to supplement the meagre family income. To combat this scourge of child labour. and at the same time the situation that has given rise to it, a series of measures appear to be called for. In the first place, it would be necessary to implement the ILO's programme of action for the satisfaction of basic needs, and in particular its demands for the guaranteeing of equal remuneration for work of equal value, the provision of vocational training and working conditions adapted to the age of the persons concerned, prohibition of the exploitation of child labour and increased educational opportunities. Along the same line of thought it would be desirable, more specifically, to strive to enforce the legislation aimed at the abolition of child labour and to back it up by practical social policy measures such as the granting of family allowances, the more appropriate types of welfare work, the establishment and development of a suitable infrastructure of healthy recreational facilities and the adoption of measures with a view to the generalisation of compulsory schooling, having regard to local conditions and needs. Even though at present hardly any South or Southeast Asian country is in a financial position to carry out such programmes on a large scale, the situation might improve if they were to adopt a determined approach as a matter of policy, modify the priorities allocated in their respective national budgets and attach due importance to the need to be able to rely on the near future on a healthy and educated younger generation. It would also be necessary to convince the trade unions of the need to give more thought than hitherto to the abolition of child labour, which would have as its counterpart an increase in the employment—and the earnings—of adults.

So long as the abolition of child labour has not effectively been achieved in the manner prescribed by law, the conditions in which children work and live today will have to be protected by every means appropriate to the circumstances, traditions and types of work performed in each country—for instance, through tax relief, subsidies or other types of indemnities, etc.

It might also be possible, making use of all the communication media available, to organise campaigns to inform the public of the harmful effects of child labour and its alternatives, emphasising that children should not have their senses dulled nor their future jeopardised through having to work, but, on the contrary, should be able to enjoy themselves healthily and acquire an education.

It would appear that a final solution to the problem of child labour depends on the economic, social and cultural development of the countries of the region.  $\Box$ 

# Child Welfare Development: The Singapore Experience

Stella R. Quah

CHILD WELFARE services are a common part of the social services provided in modern societies. There are, however, international variations in terms of the emphasis placed on child welfare compared to other types of welfare, as well as variations in the extent to which different aspects of child welfare are regulated and implemented. The main premise in this analysis is that there are two distinct types of child welfare services, *i.e.*, the case services and the public social utilities. Furthermore, the latter type is given less emphasis in policy formulation and implementation in developing countries than the former. The strengthening of public social utilities is needed as a nation moves to higher levels of social development and industrialisation.

To illustrate this premise, an analysis will be made of child welfare services in Southeast Asia, taking Singapore as the central example and drawing parallels with her immediate neighbours—Malaysia, Indonesia, Thailand and the Philippines—whenever possible. Finally, the problems of demand and supply of child welfare services will also be discussed.

### CASE SERVICES Vs. PUBLIC SOCIAL UTILITIES

Some definitions are in order at the outset. Regarding welfare services, the distinction between case services and public social utilities has been made by Kahn and Kamerman<sup>1</sup> in their international study of social services. They define social services as 'essential forms of communal provision'<sup>2</sup> and indicate five basic social services or public utilities (i.e., education, income-transfer, health services, public housing and employment training) and a sixth type, the 'personal social services' which are individualised in delivery 'assuring access to rights or benefits or offering counselling and guidance'.<sup>3</sup>

Personal social services are themselves classified into case services and

<sup>&</sup>lt;sup>1</sup>See A.J. Kahn and S.B. Kamerman, *Social Services in International Perspective: The Emergence of the Sixth System* (Washington: US Department of Health, Education and Welfare, 1976).

<sup>&</sup>lt;sup>2</sup>Ibid., p. 2.

<sup>3</sup>Ibid., p. 3.

public utilities. Kahn and Kamerman define case services as those personal social or welfare services for people with special problems which require 'a diagnostic or assessment process' and formal or informal certification of need or eligibility. Public social utilities, on the other hand, are defined by Kahn and Kamerman as personal welfare services addressed to and used by consumers at their own initiative and convenience. Case services in child welfare include programmes and homes for abused and neglected children, institutional care for juvenile delinquents and child guidance clinics for children with behavioural problems. The child day-care programmes and centres constitute the most ready example of public utilities in child welfare.

Legislation in Singapore, like that of most new nations, is geared almost exclusively to the provision of case services in child welfare. Indeed, the regulations concerning the protection of women and girls in the Women's Charter, the Adoption of Children Act, and the Children and Young Persons Act<sup>6</sup> all deal with child abuse, child neglect, juvenile delinquency and the general protection of children and young persons who may be considered to be 'in moral danger'. The public utilities side of child welfare, that is, the day-care services for normal children have received less explicit attention from policy makers. There is, nevertheless, a general policy communicated through public speeches by political leaders and other less formal channels, whereby the private sector both at the level of private business enterprises as well as voluntary organisations are encouraged to participate actively in the provision of child day-care services while the government concentrates its efforts on case services.<sup>7</sup>

A similar preponderance of legislation on case services over public utilities is found in Indonesia, Malaysia, Thailand on the Philippines, all of which are members of the Association of Southeast Asian Nations (ASEAN). A combination of public and private efforts including voluntary

<sup>4</sup>Kahn and Kamerman, op. cit., pp. 7-8.

51bid., p. 6.

<sup>6</sup>See Law Revision Commission, *The Statutes of the Republic of Singapore*. Revised Edition of Acts (Singapore: Singapore National Printers, 1970).

<sup>7</sup>Social Welfare Department, *Annual Report* 1977 (Singapore: Social Wefare Department, 1978), p. 22.

<sup>8</sup>The National Coordinating Board for Family and Child Welfare, *Activities in the Field of Child Welfare in Indonesia* (Jakarta: Ministry for National Research of the Republic of Indonesia, 1966).

<sup>9</sup>Federal Department of Information, Malaysia, National Planning and Development for Children and Youth (Kuala Lumpur: Life Printers, n.d.); and B.H.M. Baharuddin and B.H. Shaharuddin, Situation of Children and Youth in West Malaysia (Kuala Lumpur: Malaysia Centre for Development Studies, 1971), pp. 65-66.

10P. Yamklinfung, The Needs and Problems of Children and Youth in Four Slums in Bangkok (Bangkok: Chulalongkorn University Social Science Research Institute, 1973),

pp. 109-126.

<sup>11</sup>E.P. Reubens, *Planning for Children and Youth Within National Development Planning* (Geneva: UN Research Institute for Social Development, 1967).

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organisations have resulted in the establishment of some day-care centres in Malaysia<sup>12</sup> while the municipal government in Bangkok runs a few of these centres for working mothers in the lower class.<sup>13</sup> However, compared to the emphasis received by case services, the public utilities of child welfare have not been developed fully in any of the ASEAN countries.

If one considers the development of welfare services as a community response to the changing economic, social and political environment, <sup>14</sup> it is then useful to see Singapore vis-a-vis the other four ASEAN countries in terms of some relevant economic and social indicators. Table 1 illustrates the wide range of variation among these five countries. In response to her high population density and small size, Singapore has managed to reduce population increase and has the lowest birth rate. Singapore's infant mortality rate is the lowest while Indonesia has the highest. Life expectancy is also the highest in Singapore, followed closely by Malaysia. Of the five countries, Singapore is the only one with a predominantly urban population, the highest per capita energy consumption and the highest GDP per capita. The overall variation in the level of development may be appreciated by the physical quality of life index (PQLI) scores.

With the exception of Singapore, all the other four countries have between 43 to 44 per cent of their populations under 15 years of age. Such a high proportion of children suggests a heavy demand on general child welfare services. Keeping in mind the lower level of economic development of these countries, it is understandable that child welfare policies and their implementation be seriously restricted to what is commonly believed to be of higher priority, that is, child care services. There are indications that this is indeed the case in Indonesia, 15 Malaysia and the other countries. 17

There appears to be a differential need for child care services among the ASEAN countries; this is hinted by two of the indicators in Table 1. Firstly, Singapore requires services for children who live in an urban city-state while the other countries, particularly Indonesia and Thailand, have a predominance of rural population. The second related difference is the potential demand for child day-care services represented by the type of occupation of female workers. The highest concentration of female workers in Singapore is in manufacturing; the other four countries have the highest concentration of

<sup>12</sup> Baharuddin and Shaharuddin, op. cit.

<sup>&</sup>lt;sup>13</sup>Yamklinfung, op. cit.

<sup>&</sup>lt;sup>14</sup>As indicated by B.L. Wilensky, *The Welfare State and Equality* (Berkeley: University of California Press, 1975), p. 50.

<sup>15</sup> The National Coordinating Board for Family and Child Welfare, op. cit.

<sup>16</sup>Baharuddin and Shaharuddin, op. cit.; Haji Junid B.H.A.R., Report of the Registrar General on Population, Births, Deaths and Marriages and Adoptions (Kuala Lumpur: Government Printing Office, 1972); State of Sabah, Report of the Department of Welfare Services for the Years 1974-75 (1975); Sarawak Social Welfare Council Annual Report 1966 (1967).

<sup>17</sup> Reubens, op. cit.

TABLE 1 POPULATION AND DEVELOPMENT INDICATORS FOR THE ASEAN COUNTRIES

	ASEAN Countries					
Variables <sup>a</sup>	Indonesia	Malaysia	Philippines	Singapore	Thailand	
1976 Population (in million)b	134.7	12.4	44	2.3	43.3	
1976 Population (in million)	89	70	144	3,784	84	
1976 Density (pop/sq. kilometer) 1976 Birth rate per 1,000 popula- tion <sup>b</sup>	38	39	41	18.8d	36	
1976 Infant mortality rateb	125	75	74	11.6d	81	
19/6 Infant mortality facto	(1973)	(1974)	(1975)	(1970-75)	(1974-75)	
Life expectancy in years	46.4	65.0	58	67.4	57.6	
Male	48.7	70.3	61	71.8	63.6	
Female 1976 Per cent urban population	19	29	35	90	20	
1976 Per cent urban population 1975 Per capita energy consump- tion (kilograms of coal equivalent)	178	578	326	2,151	284	
GDP per capita, US	127	602	355	2,324	323	
(Year)	(1973)	(1973)	(1974)	(1974)	(1974)	
Female literacy (per cent of females)	49	62	76	67	75	
(Year)	(1971)	(1970)	(1970)	(1976)	(1970)	
Physical quality of life index (PQLI) <sup>c</sup>	50	59	73	85	70	
Percentage of total population under 15 years of age <sup>e</sup>	43.5 (1976)	43.0 (1973)	43.0 (1975)	32.0 (1975)	44.0 (1975) A=59%	
Industry with the highest percent- age of female workers <sup>‡</sup>	A=62% (1971)	A=54% (1970)	A=35% (1975)	M=36% (1977)	(1976)	

<sup>&</sup>lt;sup>a</sup> Unless otherwise specified, the figures are from D.L. Nortman and E. Hofstatter, *Population and Family Planning Programs* (New York: Population Council, 1978).

b Source: J.W. Sewell, *The US and World Development Agenda* 1977 (New York: Overseas Development Council, 1977).

c PQLI is a composite index of three indicators: life expectancy, infant mortality, and literacy. It ranges from Low = 1 to High = 100, with Sweden rating 100. See Sewell (1977: 149-150) for more details.

d Department of Statistics, Yearbook of Statistics Singapore 1976/77 (Singapore: Department of Statistics, 1977).

e Estimated from United Nations, Statistical Year Book for Asia and the Pacific (Bangkok: ESCAP, 1976), pp. 164-455.

f Estimated from Industrial Labour Organization, Yearbook of Labour Statistics (Geneva: ILO, 1978), p. 44. A: Agriculture; M: Manufacturing.

female workers in agriculture. It is common for married females engaged in agriculture to receive the help of close or extended kin in child care or, alternatively, to bring their children to the fields. The latter alternative is not available for the urban working mother who depends on her relatives' assistance in child care or, frequently, on some fee-for-service option. In other words, the demand for public utilities in child welfare is greater in urban than in rural areas; the experience of European and North American

countries confirms this urban-rural difference. 18

## DEMAND FOR CHILD WELFARE SERVICES

A closer estimation of the demand for child welfare services in terms of both case services and public utilities in Singapore is provided in Table 2. Ten indicators are listed which give an approximate idea of the demand for child welfare services, and the fluctuation of such demand over the past eight years. The first indicator of demand is the percentage of the total population under 15 years of age. The figures in Table 2 illustrate the impact of the family planning programme in Singapore: the percentage of population under 15 years has decreased from 37.7 per cent in 1971 to 29.6 per cent in 1978.

TABLE 2 ESTIMATION OF CHILD WELFARE SERVICES DEMAND IN SINGAPORE: SELECTED INDICATORS 1971-1978

		1971	1974	1976	1978
1.	Percentage of total population under 15 years of age <sup>a</sup>	37.7	34.3	31.8	29.6
2.	Infant mortality rate per 1,000 live birthsa	20.1	16.8	11.6	12.6
	Number of marriages per 1,000 females aged 15-44 years <sup>a</sup>	33	50	38	36
4.	Number of divorces per 10,000 females aged 15-44 yearsh	12	13	19	17
5.	Total population in children's welfare homese	610	691	640	718 (1977)
6.	Number of children in welfare homes per 10,000 population aged 0-19 years <sup>d</sup>	6	7	6	7 (1977)
7.	Percentage of total female population aged 15-64 years in the labour force <sup>a</sup>	31.5	39.2	38.4	42.3
8.	Average daily attendance at creches per 10,000 children aged 0-4 years <sup>d</sup>	15	19	20	19
9.	Percentage of population aged 5-14 years enrolled in primary schoole		64 (1975)	63	63 (1977)
10.	Pupil/teacher ratio in primary schools <sup>a</sup>	30	29	28	27

a Department of Statistics, Singapore Annual Key Indicators (Singapore: Singapore Department of Statistics, 1979).

b Calculated from total divorce figures in (a) above and the population figures in Department of Statistics, *Yearbook of Statistics* (Singapore: Singapore Department of Statistics, 1971-1978).

c Social Welfare Department, Annual Reports 1971-1977 (Singapore: Social Welfare Department, 1972-1978).

d Calculated from figures in (c) above and Department of Statistics, Yearbook of Statistics (Singapore: Department of Statistics, 1971-1978).

e Calculated from figures in Department of Statistics, Yearbook of Statistics (Singapore: Department of Statistics, 1971-1978).

18A.J. Kahn, and S.B. Kamerman, Not for the Poor Alone: European Social Services (New York: Harper, 1975).

Merely in terms of numbers, the population of potential recipients of child welfare services is decreasing. On the other hand, the second indicator of demand, *i.e.*, infant mortality rate, has decreased from 20.1 per thousand live births in 1971 to 12.6 per thousand in 1978. This decrease is, among other things, the result of effective health services for expectant mothers, better maternal and child health care services and general improvement in life conditions over the years.

At a different but related level the third indicator of the number of marriages per 1,000 females aged 15 to 44 years illustrates the trend of formation of new families. Although there was an increase in 1974, the number of marriages in proportion to the population has remained relatively stable during the past eight years. Similarly, the trend of family breakdown is relatively low. This trend is represented by the number of divorces per 10,000 females aged 15 to 44 years and it has undergone a modest increase from 12 per 10,000 in 1971 to 17 per 10,000 in 1978.

The above figures and trends are very relevant for our analysis of child welfare services. Research findings identify marital breakdown as a breeding ground for child neglect, child abuse and juvenile delinquency among other child problems.<sup>19</sup> These are basically the type of problems requiring case services from child welfare agencies.

Indicators 5 and 6 in Table 2 provide a more direct illustration of utilisation of case services. The total population in children's welfare homes has remained relatively stable from 1971 to 1978. Indeed, in 1971 there were 6 children in welfare homes for every 10,000 persons below 20 years of age. This figure rose marginally to only 7 in 1978.

The demand for an important type of social public utilities within child welfare, namely, child day-care services, may be gauged by indicators 7 and 8 in Table 2. Female participation in the labour force is a socio-economic phenomenon that affects changes in family roles including child care roles traditionally assigned to the mother.<sup>20</sup> Singaporean females aged 15 to 64 and particularly those between 15 to 25, have been joining the labour force in increasing proportions during the past decade. In 1971 31.5 per cent of this population were in the labour force. That proportion increased to 42.3 per cent in 1978.

In urban centres which have ample opportunities for the employment of women, one may expect the demand for child day-care services to increase proportionately with the increase in female labour force participation. In Singapore, the average daily attendance at children day-care centres has indeed increased from 15 per 10,000 children below 5 years of age in 1971,

<sup>20</sup>W.R. Burr, *Theory Construction and the Sociology of the Family* (New York: John Wiley & Sons, 1973), pp. 234-260.

<sup>&</sup>lt;sup>19</sup>R.S. Kempe and C.H. Kempe, *Child Abuse* (London: Open Books, 1978), and A. Clegg and B. Megson, *Children in Distress* (Baltimore: Penguin, 1968).

to 19 per 10,000 in 1978. Nevertheless, this increase is lower than expected given the proportion of women in the labour force.

Some intervening factors may clarify the situation. One of the factors that affects the correspondence between female labour force participation and demand for child day-care services is the availability of an alternative and more acceptable solution, namely, the availability of child care by close relatives such as grand-parents. Given the particular social values held with regard to family ties and family roles in Singapore, the availability of grand-parents' help in child care may well be higher here than in other urban and industrialised nations in Europe and North America. This highly regarded alternative may not last for long if Singapore's development follows closely that of most European and North American countries.<sup>21</sup>

Another intervening factor in the association between female labour force participation and demand for child day-care services is also a family-related social value: the belief that child care is the main, if not the exclusive, responsibility of the mother. This value or sex-role stereotype is extended to the expected duties of a wife as well. The outcome of such beliefs is reflected in the differential labour force participation rates of females of different age groups. Singapore's female workers tend to leave their jobs upon marriage or childbirth to dedicate their full attention to their families.

This tendency is clearly identified by available empirical data. The past decade's increase in female labour force participation seen in Table 2 reveals an interesting trend when it is examined by age-specific rates in Table 3. In addition, this Table illustrates the wide difference between male and female rates for the years 1971 and 1978. The peak in participation is reached by females in the 20 to 24 age group. In 1970 53.6 per cent of the women in this age group were working. This rate increased to 73.2 per cent in 1978. Yet, the rate of participation in the labour force begins to decline as age increases among females 25 years old and older.

More interestingly, the age at which the decline begins coincides with the average age of marriage for Singaporean females, namely 24.2 years.<sup>22</sup> There is indeed a large difference in labour force participation between single and married females. In 1974 the total labour force participation for single females was 62.9 per cent while it was only 23.0 per cent for married females.<sup>23</sup> In contrast, the corresponding rates for single males was 69.8 per cent and for married males 91.5 per cent.<sup>24</sup>

The final estimation of demand for child welfare services is provided by indicators 9 and 10 in Table 2. The majority (63 per cent) of children between

24 Ibid.

<sup>&</sup>lt;sup>21</sup>Kahn and Kamerman, Not for the Poor Alone, op. cit.

<sup>&</sup>lt;sup>22</sup>Department of Statistics, Yearbook of Statistics Singapore 1977/78 (Singapore: Department of Statistics, 1978), p. 27.

<sup>&</sup>lt;sup>23</sup>Pang Eng Fong, Labor Force Growth, Utilization and Determinants in Singapore (Singapore: Economic Research Centre, 1975), p. 17.

Table 3 LABOUR FORCE PARTICIPATION RATES IN SINGAPORE, 1970 AND 1978

(In Percentages)

			1970	1978
Total	population	Total	46.6	51.6
	ars and	Males	67.6	68.3
over		Females	24.6	34.6
15-19		Total	49.5	42.3
years		Males	55.7	43.1
		Females	43.0	41.4
20-24		Total	73.5	82.3
years		Males	92.9	91.2
		Females	53.6	73.2
25-29		Total	64.5	74.8
years		Males	98.0	96.6
		Females	30.8	53.1
30-34		Total	60.6	67.8
years		Males	98.3	98.2
		Females	22.7	36.8
40-44		Total	60.8	64.5
years		Males	98.1	98.2
		Females	17.8	30.1
50-54		Total	55.0	55.1
years		Males	88.1	89.8
		Females	17.5	20.6

Source: Ministry of Finance, Economic Survey of Singapore 1978 (Singapore: Singapore National Printers, 1979).

5 to 14 years of age are enrolled in school. With a system of two school sessions daily, these children are under school supervision for at least half of the working day. The proportion of children in primary school has not fluctuated significantly during the past four years.

On the other hand, the quality of supervision received in school appears to be improving if the pupil/teacher ratio is accepted as an appropriate indicator. This ratio has declined from 30 pupils per teacher in 1971 to 27 pupils per teacher in 1978. Yet, the other dimension of the enrolment figures indicates that an average of 27 per cent of the children aged 5 to 14 years are beyond the reach of supervision provided by schools for various reasons. These children usually have special needs and require alternative expert supervision and care. Thus, they represent a core group of potential or actual users of child welfare case services.

The preceding discussion of child welfare services demand in Singapore conveys two main features. Firstly, the demand for case services is modest or within expected levels given the size of the population and the stage of socio-

economic development. Secondly, the increasing level of female labour force participation and changing social values indicate that the demand for child welfare services of the public utilities type—especially child day-care—is likely to increase. Furthermore, if the half-day school system is not changed to a full-day school system, day-care services will have to be extended to school children with working parents in order to ameliorate the lack of supervision for the 'latch-key' children.

# SUPPLY OF CHILD WELFARE SERVICES

Having dealt with the demand we may now turn to the supply of child welfare services in Singapore. Two main aspects of supply will be considered, the quantitative aspect and the process of selection or access to these services. Quantitatively speaking, two major sources of supply are readily identifiable, namely, the government and the private sectors. Both sectors offer case services and public utilities in child welfare.

The case services found in Singapore are not very different from those found in Europe and the United States. Singapore's case services provide residential and institutional care for abused and destitute children, orphans and delinquent children. There are 21 children's homes for this purpose in Singapore; nine of them are administered by the social welfare department of the Ministry of Social Affairs and the other twelve are run by private voluntary organisations.<sup>25</sup>

The social welfare department has established three special services for disadvantaged children. These services are the adoption services, the fostering scheme for children below 19 years of age, and the home-makers scheme which is

set up especially to help those families with children (below 14 years of age) who are in need of care because of the absence of their mother through illness, child-birth or other emergencies.<sup>26</sup>

The dominant principle behind these three schemes is to keep the child in his/her own home or to provide the child with a family and home atmosphere as similar to the real home as possible. Institutional care is used 'only as a last resort'.<sup>27</sup> Correspondingly, the child's natural parents, if available, are expected to contribute to their child's support according to their financial situation.

Children who are handicapped and/or sick may receive medical and rehabilitative care from three paediatric units in government hospitals and

<sup>&</sup>lt;sup>25</sup>Singapore Council of Social Services, *Child Welfare Services Resource Book* (Singapore: Singapore Council of Social Services, 1978).

<sup>&</sup>lt;sup>26</sup>Ibid., p. 53.

<sup>27</sup> Ibid.

nine voluntary agencies.<sup>28</sup> Counselling, guidance and psychiatric services are provided for children with behavioural problems. Seven government agencies and two private and voluntary institutions deal with these types of services.<sup>29</sup>

The public utilities within child welfare are represented in Singapore by day-care centres or creches and some recreational and supportive services. Eight of the eleven day-care centres available are administered by the creche section, social welfare department of the Ministry of Social Affairs, while the remaining three have been transferred from the public to the private sector. More specifically, they are now administered by two trade unions, the National Trade Unions Congress (NTUC) and the Singapore Industrial Labour Organisation (SILO).<sup>30</sup> This transfer exemplifies the implementation of the government's directive to encourage the private sector to provide child care services. In fact, the private sector has been actively involved in the provision of recreational and supportive services for children. Private organisations run 21 of the 22 existing services of this nature.<sup>31</sup>

The second aspect of supply of child welfare services refers to the processes of selection or accessibility. These processes vary according to the type of service. Who determines whether a child is eligible for institutional care depends, in turn, on the specific child's problem. When a child has been identified as a delinquent for a given offence by the juvenile court, according to the legislation in Singapore, the courts determine the child's need for probation and placement in one of the social welfare department's children's homes or hostels. In special cases the department may contact children's homes run by voluntary organisations to arrange for the admission of a particular child. Payment for the child's maintenance in these institutional homes is not necessary unless the department estimates that the child's family can contribute financially.

In cases of child abuse or neglect that have been investigated and confirmed by the social welfare department, the department may arrange the transfer of the child's custody from the parents to relatives or non-relatives usually through the Foster scheme or the adoption service. There is no single source from which the social welfare department receives complaints of child abuse or neglect. Common channels of information are the police—through complaints by neighbours or relatives—and medical practitioners. The medical social workers' offices in general hospitals in coordination with medical personnel serve as another means of detection of child abuse and neglect.

The voluntary organisations are usually autonomous in determining the

<sup>&</sup>lt;sup>28</sup>Singapore Council of Social Services, op. cit., p. 23.

<sup>&</sup>lt;sup>29</sup>*Ibid.*, p. 37.

<sup>&</sup>lt;sup>30</sup>Ibid., p. 55.

<sup>31</sup> Ibid., pp. 65-88.

entrance requirements to their children's homes. Normally a voluntary institution is managed by a management committee or board of directors. The functions of the board include the admission and discharge of children. Considerations for admission include, of course, the availability of vacancies and the board's satisfaction with the information on the applicant's need for care.<sup>32</sup> Another common criterion for admission is age. Both the government and the voluntary institutions have homes that cater for children of different ages. Similarly, these homes are regularly classified into boys' and girls' homes and hostels.

Accessibility to the foster scheme and the home-maker's scheme is also determined by the department upon investigation of suspected cases of ill-treatment, neglect or other serious problems. The foster scheme began in 1956 as a service for infants only; it was extended to children below 11 years of age in 1962 and later, in 1976 it was further expanded to serve children under 18 years of age.<sup>33</sup> This extension of services

has enabled a child to remain in a foster home until he is able to fend for himself. In such cases, the young person is encouraged to remain in the foster home but to contribute towards his own keep.<sup>34</sup>

The department selects the foster parents and pay them an allowance ranging from S\$95.00 to S\$115.00 per month for the child's food, clothing and school expenses, depending on the child's school level.<sup>35</sup> One major problem of accessibility to the foster scheme service is the lack of suitable foster parents. This service could be provided to more eligible children if more married couples were willing and found suitable to become foster parents.<sup>36</sup>

The home-maker's scheme faces a similar problem of recruitment of suitable home-makers. The department usually searches for home-makers among the female friends and neighbours of the child's family. Once selected, the home-maker enters the child/children's home and takes care of the children's supervision and regular household chores. The regular allowance paid by the Department to the home-maker ranges from \$\$35.00 to \$\$80.00 per month depending on the number of children under her care.<sup>37</sup>

<sup>32</sup>Singapore Council of Social Services, "Some Observations of the Delivery of Services in Voluntary, Institutions for Children," Singapore: Singapore Council of Social Services, 1973 (Mimeographed).

<sup>33</sup>Social Welfare Department, *Annual Report* 1976 (Singapore: Social Welfare Department, 1977), p. 4.

34 Ibid.

35 Ibid.

<sup>36</sup>This remark was made by a Social Welfare Department spokesman in a Radio and Television Singapore (RTS) documentary entitled "A Home Away from Home," broadcasted on RTS Channel 5, on 6 June 1979.

37 Social Welfare Department, Annual Report 1976, p. 5.

The accessibility to counselling, guidance and psychiatric services normally depends on a variety of referral sources: the police, school teachers, relatives or parents themselves may approach these services directly or may refer the problem child to the appropriate agencies. The child psychiatric clinic of the Ministry of Health has two standard procedures depending on the source of referral. When a child is referred to the clinic by private physicians or when the child's parents request the services of a particular doctor at the clinic, the consultation fee is \$\$35 for the first consultation. But when the child is referred to the clinic by the school principal, a government doctor, social worker or psychologist, the fee is nominal, *i.e.*, \$\$1.00 for the first consultation.<sup>38</sup> The age requirement for access to the clinic's services is below 17 years for non-schooling persons and school children up to preuniversity II (equivalent to the sixth year of secondary education).<sup>39</sup>

According to the working definition of public social utilities presented earlier<sup>40</sup> child day-care services are provided to consumers who may use them on their own initiative and at their own convenience. In consequence, problems of accessibility to child day-care services are mostly in terms of quantitative adequacy, cost and perceived accessibility. Regarding quantitative adequacy, the eleven existing creches in Singapore appear to be sufficient for the present demand as seen in the average daily attendance in Table 2. In fact, one of the government-run creches was closed down in 1976 because of 'the low attendance and high cost of operating creches'.<sup>41</sup>

Cost as a barrier to access varies with the type of child day-care centre. The government creches charge significantly low fees. Their fees range from S\$0.20 to S\$3.00 per day in a sliding scale according to the combined family income per month.<sup>42</sup> The cost of a private babysitter is normally higher and fluctuates. Unfortunately, the lack of relevant records prevents any detailed comparison of private babysitters and other types of child day-care.

Perhaps another problem of access to child day-care services that deserves mention is perceived accessibility. Perceived accessibility may be defined as the subjective perception a person has of his/her chances of obtaining a given service.<sup>43</sup> The person's level of information on the service and his/her belief in the efficacy of the service to solve his/her need, are aspects of perceived accessibility.

Today, in Singapore, an interesting transitional situation is found where seemingly opposed values coexist. Females, both single and married, are becoming increasingly determined to get jobs outside their homes and gain

<sup>38</sup> Singapore Council of Social Services, Child Welfare Services Resource Book, p. 45.
39 Ibid

<sup>40</sup> Kahn and Kamerman, Social Services in International Perspective, op. cit., p. 6.

<sup>&</sup>lt;sup>41</sup>Social Welfare Department, Annual Report 1976, p. 18.

<sup>42</sup> Ibid.

<sup>&</sup>lt;sup>43</sup>S.R. Quah, "Accessibility of Modern and Traditional Health Services in Singapore", Social Science and Medicine, Vol. 11, No. 5 (1977), pp. 333-340.

some economic and social independence from their families and husbands. At the same time, working mothers believe in the superiority of home care for their children and appear to shun the child day-care offered by institutions. The latter tend to be perceived as mass care, impersonal and of lower quality than the affectional and overall better care that parents and grandparents can provide. In other words, there are indications that working mothers are not prepared to use a public social utility for child care due to their subjective perception of the efficacy of creches.

The analysis of child welfare services is a complex task. Considering that the situation in Singapore has parallels in many developing societies, it is hoped that the data and issues discussed above will not only contribute towards a better understanding of child welfare service in Singapore, but also encourage those interested to initiate similar research in the other new states in Asia and Africa.

# Administrative Vs Programme Expenditure

The Committee find that in 1971-72, the expediture on programmes included in the Central Social Welfare Board's budget stood at Rs. 249.27 lakhs, and the administrative expenditure including its share of administrative expenditure on State boards amounted to Rs. 35.58 lakhs. With the increase in expenditure on programmes in 1977-78 to Rs. 441.89 lakhs, the total administrative expenditure has risen to Rs. 78.16 lakhs thus representing 17.68 per cent of the expenditure on programmes. The Committee is of the view that administrative expenditure to the extent of 17.68 per cent of the total expenditure on programmes is on the high side. They would like the Board to effect economy in administrative expenditure.

-Report of the Public Accounts Committee (1978-79)

# Child Welfare Developments in Other Countries

# Austria

	Total	Population	Children (	hildren (0-14)		
		(in	million)			
1975		7.5	1.8	•	24.0	
2000		8.1	1.7		21.0	

THE COMPREHENSIVE reform of the Austrian family law which during the time of the three Kreisky\* Administrations since 1970 has been implemented by agreement between all the three parties represented in the Nationalrat (the legislative chamber elected by popular vote) is founded on the consistent basis of an equal relationship between husband and wife in all spheres of family life. Within the framework of this reform too the relations between parents and children have been freshly systematised and there have been taken into consideration concepts and ideas that now, during the International Year of the Child, are finding worldwide response.

What Austria's legislators have been concerned to do is to extend full legal safeguard to the child in respect of its dignity as a human being, to guarantee the inviolability of its person, and to afford an opportunity to express its opinion or to have a say in all matters where this can reasonably be expected from its judgement and understanding.

The law of 30 June 1977 on the reorganisation of the parent-child relationship, which acquired statutory force on 1 January 1978, has brought family law into line with the parents and child basis as it exists in modern society (as well as giving fresh stimuli to a development still in progress) and so formulates the rights of the child that henceforward no difference any longer exists between those born in and out of wedlock. It is understandable that this law, in a century which from the outset has been described as the century of the child, pays far more attention to the personality, it could indeed be termed the humanity, of the child than was done by legislators in earlier periods.

The previously vested right of parents to inflict corporal punishment, for example, has been repealed and in certain fields the child has been granted greater freedom to participate in decisions. This includes the opportunity for a ten-year-old to be heard in court before the latter settles as to which pair of grandparents shall be entrusted the child's education if its

\*Dr. Bruno Kreisky, Federal Chancellor, Chairman of the Austrian Socialist Party (international equivalent = Social Democrats).

parents for one reason or another are unable to fulfil the responsibility. Moreover a child that has come of age, that is, a fourteen-year-old, can seek court aid if its parents try to impose a career which goes against the grain or which does not seem suited (as it is no rare occurrence when one of the parents wants to see the child following a course that remained thwarted in his/her own case). In both instances the court must give its ruling after careful consideration of the arguments and counter-arguments.

The new Austrian family law leaves no room for inferring anti-authoritarian trends. The new Article 137 of the General Civil Law Code expressly states that "Parents and childen must succour one another. Children must show their parents respect." New Article 140 displays distinct traces of parliamentary legal committee work inasmuch as it includes the passage, "Parents must to the best of their ability contribute proportionally to the child's needs as commensurate with their standard of living and due regard for its aptitudes, abilities, inclinations, and development potentialities. The parent in charge of the household where the child is looked after thereby renders its contribution." The Government Bill originally provided that the parents should contribute jointly and severally to the child's education and maintenance. The Legal Committee, though, held that such joint liability was superfluous in view of the prevailing laws on maintenance and that, further more, a proportional obligation does away with the last of the still remaining distinction in that body of law between children born in and out of wedlock. The Government Bill had in addition spoken about the conduct of the household in which the child grows up. The Legal Committee preferred to speak of its care because this demands not only the actual activity in the interest of the child, but extends that duty also to children already grown up but not as yet capable of their own maintenance.

### A SAY FOR TEN-YEAR-OLDS

Ten-year-olds also have a say when it is a matter of rules as to visits in cases where parents do not live together and the child's education and care has been entrusted exclusively to the father or mother. In principle the parent to whom the education has not been entrusted is certainly entitled to personal dealings with the child. A court can, however, for the sake of the child, either restrict the practice of this right or prohibit it altogether. Before the decision is taken, the child must 'as far as is expedient' be given a hearing. In this instance there is consequently no obligation to give a hearing as is the case with the child's accommodation outside the parental home. Evidently the danger was meant to be borne in mind that a ten-year-old can be entirely under the influence of one of the two partners to the marriage and that in such circumstances the testimony would hardly be likely to reflect the child's own opinion.

The new Austrian law on the parent-child relationship at any rate stands

out for banning outdated, doctrinaire, and subjective forms of upbringing from the field of education, insofar as this is possible by legal means, and presenting the child with fresh scope for freedom where the desire for assertion of its individual personality can be unimpededly developed.

The Advance of Maintenance Act of 1976, statutorily in force from November 1976, is an important complement to the substantially improved maintenance protection afforded by the preceding law-making activities on guardianship and reorganisation of the illegitimate child's rights. The Act eliminates, in the interest of the child, a weak spot remaining in the provision relating to a wife—the mother's comparative helplessness if a father who is unwilling to pay cannot be traced by her. The Act, hailed internationally as a remarkable piece of innovatory Austrian legislation, prescribes that the state shall help out when defaulting fathers do not meet their maintenance obligations. The prior condition is that an enforcement order shall have been issued without avail against the maintenance defaulter or that that appears fruitless from the start. The child is the entitled party, but the application for grant of the maintenance advances can be made by the mother too. The finding is by the competent guardianship court. The refunding of the advances by the child's father is the concern of the youth offices. During the first two years of the Act's existence 'Father State' has paid out almost 300 million Austrian schillings on maintenance advances. Every month nearly 20,000 children are recipients of this assistance.

In line with the disintegration of the former large family unit, the new law on parent-child relationship likewise loosens those bonds which once automatically subsisted between grandparents and grandchildren. Henceforward grandparents are no longer obliged in all circumstances to pay for the child's maintenance. Hitherto they had, as a matter of legal practice, already been called in when maintenance could be raised only with difficulty from the parents. Now the grandparents' obligation solely arises in cases where the parents are no longer living or they are wholly or partially unable to be gainfully employed. Even then this obligation is not an absolute one inasmuch as it is not meant to endanger the grandparents' own 'appropriate support'. The child suffers no disadvantages thereby. Thanks to the Advance of Maintenance Act the state can, if necessary, on occasion play at being grand-dad.

A further slackening in the ties between grandparents and grandchildren can be seen in the provision for children as soon as they are fourteen being able to enter, so to speak, protest against being handed over to their grandparents if their parents cannot meet their obligations as to upbringing. The parliamentary legal committee which made an alteration to the Government Bill (it envisaged, if all parties agreed, a direct assignment to one pair of grandparents of the responsibilities for care and upbringing) took the thoroughly realistic view that the child's accommodation with other close relations, such as the parents' brothers or sisters, may not infrequently prove more beneficial than residence with grandparents of whom until then it may

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not have seen much.

Of importance to a divorced wife too is that parents must continue in the same way as in the past to contribute to the child's care and upbringing. If, as usually happens, the wife is entrusted with the child's upbringing, this also entitles her to act as its legal representative and as the administrator of its property. The undignified state of affairs where the wife had virtually to go begging for her divorced husband's signature, as, for instance, in the case of a passport application on the child's behalf, is thereby ended. The government motion of 1975 had expressly cited this as an outstandingly degrading element. Now a divorced wife can on her own application be appointed by a court to be her child's guardian.

## ADOPTION AT NINETEEN

In 1973 already a facilitation of adoption arrangements was proposed in a resolution by the Nationalrat (the legislative chamber elected by popular vote) as one among a series of measures for the protection of embryonic life. New provisions are now incorporated in the law on parent-child relationship. The previous age limits for adoptive parents are formally retained (thirty for the adoptive father, twentyeight for the adoptive mother, but they lose their validity if the married partners together want to adopt a child or the adoptive child is that of one of them. All that the law prescribes is that between adoptive parents and the child to be adopted there must be 'a relationship corresponding to such as subsists between parents and their own children' (Article 180, General Civil Law Code). The lowest age limit for adoption purposes by married people is therefore the attainment of their majority, and in 1973 this was laid down as being nineteen. The adoptive father and mother have to be at least eighteen years older than their adopted child, but if the latter is that of one of them, or merely even related, a difference of sixteen years suffices.

During the course of the overhaul given to the law on parent-child relationship it became manifestly necessary to broaden and to specify more precisely the range of contingencies for financial investment open to the guardian of a minor or other wards. This was especially so because prevailing provisions did not take into account modern principles of investment and were antiquated in their formulation. 'Trust security' had in Austria been synonymous with a hundred per cent safe capital investment. Not that in future such moneys may be any less safely invested, but the range of opportunities for their placement has been substantially increased. The Article in the law dealing with this state that a minor's trust money shall be invested without delay, safely, and as far as possible profitably by way of savings deposits, the purchase of securities (receivables), the extension of loans, the acquisition of real estate, or in other manner'.

The aim of all these provisions is that children must, as against the failure

of a trustee or an institution, enjoy complete protection, and that in the sense of human society's obligation towards the oncoming generation which has in the International Year of the Child been raised to the status of an ethical code among nations.

# Bulgaria

	Total Popu	lation Cl	hildren (0-14)	Per cent
	Alama II	(in million	n)	
1975	8.7		1.9	21.8
2000	10.0		2.2	22.0

THE CHILD'S organised education in Bulgaria starts from the nursery school and continues through all the forms and grades of schools. The four-year pre-school course at the kindergarten is a matter of parents' choice. At present 76 per cent of all children attend kindergartens. (It is envisaged that up to 93.5 per cent of the children of pre-school age will attend the kindergartens, full- or half-day, by 1990). Still those who enter the first form without having attended kindergarten before that, feel somewhat confused during their first days at school.

To overcome this difficulty, 45-day temporary kindergartens are organised at almost all primary schools. Ninetysix per cent of the six-year-olds attend such preparatory classes at kindergartens or schools.

The eight-form education is today compulsory for all in Bulgaria, and educational standards, compared to the old schools, are much higher: e.g., a foreign language was introduced as early as the third form, the programme of study was placed on strictly scientific basis and the teaching of all school subjects was rendered more comprehensible to children. The overall process of democratisation of education will be carried through with the introduction of compulsory secondary education by 1980. The principle of consistent scientific norms is valid in the teaching of all subjects and in every form. Thus, for instance, the entire primary school system (1st to 4th form) went through a radical reorganisation, involving all subjects and especially the material taught in mathematics. The teaching of the social sciences, too, is placed on scientific foundations. The study of history provides pupils with knowledge and understanding of the objective laws of historical development, the causes of war, exploitation and oppression.

The new school programme was introduced, after due experimentation, step by step. It is an endeavour to update education and bring it on a par with the present and future development of the socialist society, of science, technology, production (with which the school has established close ties) and the arts. The experience gained so far and the appraisals made by specialists have

testified to the success of the experiment. What remains to be done is to extend the teaching of art subjects and sports. However, the relatively large number of classes in the school programmes precludes any further extension. Therefore part of the artistic and physical education has been organised in various forms outside the classes.

There are 1,186 primary schools in the country. Nearly half a million pupils (403,764) attend these schools. All questions pertaining to primary education, viz., contents of the subject matter, text books and printed note books, visual and methodological aids, training of teachers and inspectors, are being solved comprehensively. In this way not a single component part can be overlooked or underestimated.

The first form curriculum is easy to master because it is conforming to the possibilities of young children, yet it is not as simple as 'singing and laughing, drawing and dancing'. It provides the essentials for the knowledge to be acquired permanently in the future after a well thought out pattern. The requirements grow with every higher grade.

The subjects taught in primary school are few—a day's programme averages three to four lessons. Reading and writing are followed by mathematics, general knowledge of Bulgaria and the world, music and singing, pictorial arts, handicraft and polytechnical lessons, physical education. Russian is taught twice a week in the third form. Particular attention is given to the classes which must develop the pupils' working habits—the children apply on paper, design or construct models of objects, do embroidery work. The lessons in pictorial arts are aimed at promoting a feeling of beauty and harmony.

After the 3rd form the pupils part with their school mistress who had alone taught them for the past three years. In the 4th form they already have a new teacher for every subject, which is required by the growing complexity of the material. In the 6th form they have the subject of geography and biology.

The intermediary stage of the Bulgarian school system and the so-called junior high schools, are divided into two periods: from the fourth through the sixth form, and the next including the seventh and eighth form. This is done to achieve a more flexible school curriculum. There are in Bulgaria 2,399 intermediary schools and 58 junior high schools attended by a total of 576,637 pupils. All teachers in the primary and intermediary schools are graduates of teachers colleges and universities.

The years from the first to the eighth form are the most intensive period in the development of children as social beings, a period in which they grow out of childhood and gradually mature as future full-fledged citizens. Therefore great care is lavished on the proper education of children over this period, in which a great deal of tact, experience and wisdom is required from the school and the family in order to shape the personalities we intend our children to become.

# Denmark

	Total	Popul	latio	n	Chi	ldren (0-	14)	Per cen
		1	(in	mill	ion)			
1975		5.I				1.1		21.6
2000		5.4				1.1		20.4

CHILD AND youth welfare legislation exists to ensure that children and young people can grow up under proper conditions. The responsibility for this rests, at local level, with the special child and youth welfare committees, whose members are appointed by the local authorities from among local residents assumed to have special qualifications for undertaking this work.

The duty of child welfare committees is—in cooperation with other local bodies—to assist in providing the best possible conditions that will enable parents to care for their own children. An important aspect of this work is to encourage local housing authorities to provide housing adequate for the needs and development of children and young people. The welfare committees have to cooperate with school authorities, health authorities, and associations or institutions active on behalf of young people, and it is also part of their duty to ensure that the local authorities have the necessary number of day time institutions: day nurseries, nursery schools, recreation centres, and youth clubs.

Associated with the child and youth welfare committees, the local governments have instituted family guidance services, which are available to parents who may need special assistance. In most places the services are provided by specially trained family guidance officers, backed by expert teams of doctors, psychologists, educationalists and social workers.

The child welfare committees offer assistance in situations where positive difficulties have arisen in children's upbringing, whether due to the parents' conditions or the children's.

Any assistance given in such cases must, as far as possible, be with the consent and approval of parents, and as far as possible in their own homes. The various forms which the assistance may take include the appointment of a supervisory officer, who will personally assist the parents in caring for their child or adolescent, and a recommendation to parents that their child be allowed to attend a day institution. Other measures may include psychological or psychiatric out-patient examination and treatment. An important feature of the assistance offered by welfare committees to parents in their own homes is the provision of domestic help where necessary during the mother's illness, or of more general financial assistance where economic problems threaten to break up the home or give rise to insecure or discordant conditions in the children's upbringing.

Also in situations where the assistance has to be in the form of temporary

accommodation away from home, any such initiative must in principle be regarded as an offer of assistance to the parents. However, the home conditions may be so strained, and appreciation of the need for assistance by the parents so lacking, that outside care may have to be enforced. Any such decision being a grave interference in the affairs of parents and children, welfare committees must first seek the aid of legal, psychological, and educational experts. It is required by law that private care must be sought first. But as the required number of suitable foster homes may be difficult to find, a number of children's and youth homes totalling just over 300 have been set up in various parts of the country. Only a few of these are state establishments, the rest being private self-governing institutions, largely maintained by public grants and minimal payments by parents. The homes can accommodate about 8,000 children, and are classified according to age group and kind of assistance provided.

An important assistance to the child and youth welfare committees, when making decisions with regard to the provision of support, is given by the eight child guidance clinics which have been set up in various parts of the country, and are mainly supported out of public funds.

The national child and youth welfare tribunal is a general appeal court to which parents may complain of any decision made by the welfare committees. The directorate for child and youth welfare supervises the welfare arrangements, including the various welfare institutions. The ultimate administrative responsibility rests with the Ministry of Social Affairs.

#### SPECIAL RELIEF

Social security schemes cannot meet every need; situations can always arise which lie outside their scope. This applies particularly to the need for assistance in a temporary emergency, assistance to families with unstable supporters, etc. Public assistance is provided in such cases under the Public Relief Act by the local governments, the amount, form, and duration being assessed by the local social authorities. Under earlier legislation, receipt of public assistance entailed a number of unpleasant legal consequences, including loss of franchise and some restriction on the choice of domicile, but these provisions have been abolished in the current law; there is nothing to the modern Danish view degrading in the receipt of assistance when needed.

#### DANISH SCHOOLS

The important points in the 1975 Act are: parent influence on education is strengthened; education is made comprehensive from the first to the tenth year; pupils may opt for one of a number of final tests or a leaving certificate.

The preamble to the Act states that schools, in association with parents,

should equip their pupils for the attainment of knowledge, skills, methods of work and powers of expression, so as to further each pupil's allround development.

In their whole work, general schools should endeavour to provide such possibilities for experience and self-activity as to enhance each pupil's desire to learn, develop his imagination and exercise his ability for independence judgement and decision-making.

The form of education is in principle comprehensive, but in the three last years (eighth to tenth) it can be either comprehensive or at two levels in the subjects of arithmetic, mathematics, English, German, physics and chemistry, thus enabling pupils to take either a basic or an extended course.

This involves decentralisation and, with it, a strengthening of parent influence. Decision as to whether education in the subjects named shall be comprehensive or at different levels will now be made by the education committee of each educational authority on the recommendation of the parent-teacher association (where there is a parent majority) and the staff councils of the individual schools.

The Ministry of Education has boosted Danish as a subject by increasing the number of lessons in nearly all grades. It did so because in the opinion of many people there had been a deterioration in the teaching of the mother tongue. The strength of public feeling on this matter suggests that parents will apply their influence in furthering the Ministry's intention by including the maximum number of Danish lessons in the timetable.

Denmark has a nine-year period of compulsory education and the public education system is obliged to offer a tenth year, with voluntary attendance. In 1975 a committee was appointed to study proposals for an eleventh voluntary year. Many educationalists and some politicians think that the trend in coming years will be in the direction of a twelve-year basic education, common to all.

It should be stated that Denmark has compulsory education but not compulsory attendance; that is to say, all children of school age must be educated, but not necessarily at publicly provided schools. Parents are free to choose whether they will have their children educated at council or state-run schools or at private ones, and the latter can be established by a group of parents. These private (or free) schools enjoy good conditions, being in receipt of substantial public grants, among other things, towards teachers' salaries. Nevertheless, most children (well over 90 per cent) attend the publicly provided schools.

#### CARE OF THE HANDICAPPED

Special care, which is the responsibility of the state, is provided for mentally retarded, mentally handicapped, epileptic, blind and visually handicapped, and physically handicapped persons plus persons who are deaf or have reduced hearing and those with speech defects.

The care is provided chiefly through state or state-approved institutions, deficits being made up by the state. A special organisation has been developed for each branch of care. Apart from the care of the insane, which is under the Ministry of the Interior, all of these special welfare services are the responsibility of the Ministry of Social Affairs, with the Directorate for Rehabilitation and Welfare as the central administrative body.

Special care covers a range of medical, educational, and social provisions and includes special treatment, special education, vocational training, foster care, personal guidance, maintenance support, etc., all based on the voluntary principle.

# German Democratic Republic

	<b>Total Popula</b>	ation	Children (0-14)	Per cent
		(in milli	ion)	
1975	16.80		3.73	22.1
2000	18.23		3.70	20.3

EVER SINCE the GDR was founded thirty years ago, measures to protect and advance the wellbeing of mother and child have been part and parcel of its government policy.

In the very first year after its founding the Law on the Protection of Mother and Child and the Rights of Women was enacted. That marked the start of a broad movement of social forces for the benefit of the rising generation, reflected, for instance, in a systematic improvement of pre-natal care, in the completion of the system of care for both healthy and sick children, in the careful planning of accommodation at creches, and many other things. Here are some figures to illustrate how these legal provisions have since become tangible reality.

Thirty years ago 75,000 children annually caught measles. That number has dropped to 1,000. Thirty years ago 78 in 1,000 children died before they were one year old. That number has dwindled to 13. The systematic implementation of the social policy programme adopted in 1971 and 1976 is geared to affording to children optimum conditions within the family and in their social environment. The supervision of healthy children, medical attendance on sick children and, where indicated, after-care, are fully assured for all children, with special attention being given to specific medical requirements and the special characteristics of a child's development. Any kind of medical consultation or treatment as well as attendant prophylactic or therapeutical measures that may be required, including medical remedies and resources as well as medicaments, are free of charge. Care for children susceptible to

disease, and especially for disabled or severely handicapped children, is regulated by law. Parents of such children are entitled to additional material and financial benefits. Government-funded research projects provide the required scientific groundwork of children's health protection. New scientific findings are speedily applied in medical practice. The health care programme includes health protection schemes that go beyond medical attendance proper. Thus, health education is an integral part of that programme.

In the effort to continue implementing the five-year plan for the development of the country's national economy from 1976 to 1980 (which was adopted by the Ninth SED Congress and approved by the People's Chamber), the 1979 national economic plan again provides for far-reaching concrete measures to further raise the material living standard and cultural level of the people. The plan envisages further improvements in medical care for mother and child, an increase in the number of places with creches and kindergartens, the construction of new schools and gymnasiums, the expansion of the existing and the creation of new holiday facilities for children, and many similar measures. The state budget allocates sizable funds for such purposes.

In 1978, 232,136 children were born in the GDR, *i.e.*, 8,984 more than the preceding year. As part of the effort to systematically improve the comprehensive medical protection of mother and child, over 200 million marks were set aside in maternity benefits in 1977. The use of up-to-date methods in obstetrics and pre-natal care lowered maternal mortality to 1.8 per 10,000 births in 1978, *i.e.*, well short of 16.5, the figure recorded back in 1952. Infant mortality in the GDR declined to 13 per 1,000 live births. Out of 1,000 children under three, 605 are cared for in creches. For this purpose, the government allocated 643 million marks in 1978 alone.

The GDR has more than 3,000 pediatricians. There is a special institute of children and youth hygiene which lays the scientile groundwork for future efforts in the health protection of children and young people. Specialists of various disciplines of the medical profession, medium medical personnel, psychologists, sociologists and educationists have an equal share in the effort to solve the tasks involved.

#### SCHOOL EDUCATION IN GDR

The constitution of the GDR provides as follows:

Every citizen of the German Democratic Republic has an equal right to education. Educational facilities are open to all. The integrated socialist educational system guarantees every citizen a continuous socialist education, training, and higher training.

In the German Democratic Republic general ten-year secondary schooling is compulsory; this is provided by the ten-year general polytechnical secondary school.

Free from exploitation, oppression and economic dependence, every citizen has equal rights and manifold opportunities to develop his abilities to the full extent and to unfold his talents in socialist society unhindered, in free decision, for the welfare of society and for his own benefit. Thus, he puts into practice the freedom and dignity of his personality.

These provisions are in accordance with the demand for equal educational opportunities for all children as laid down in the UN declaration of the rights of the child.

The educational system in the GDR has a uniform structure. All schools are public and secular. Schooling is free of charge. A basic principle throughout the educational system is the linking of education and training with everyday life, theory with practice, learning with productive work, and scientific instruction with training.

The institutions of public education work closely together with parents, enterprises and social organisations, in particular of the children's and youth organisations. Acting on behalf of all parents, over 680,000 elected parents committee members closely collaborate with the educational staff of schools.

The component parts of the GDR educational system are: the institutions of pre-school education, the ten-year general polytechnical secondary schools, the vocational training facilities, the educational establishments qualifying for entry into university, the technical schools, colleges and universities. The set-up is one that allows everybody at whatever stage to pass on to the next higher level of education up to university or college.

Children from 3 years of age are cared for in kindergartens until they enter school. Games and playing with toys are the principal forms of nursery-school education. Presently, 90 in 100 children go to a kindergarten. By 1980, it will be possible for all children of pre-school age to attend a kindergarten, if their parents so wish.

In 1978, the GDR had 12,000 kindergartens and weekly homes for preschool children, which employ over 73,000 nursery-school teachers. Attendance of kindergartens is free of charge. Parents make only a small contribution toward the cost of meals, *i.e.*, 0.35 marks per day per child. Large families and single mothers and fathers with three children pay less or nothing at all. Government spending on each place in a public kindergarten amounted to 1,500 marks in 1977.

Nursery-school teachers qualify by taking a three-year course at one of the GDR's 18 nursery-school teacher training institutes.

The ten-class general polytechnical school is the basic type of school in the GDR's education system because it enables all children to acquire a high standard of general education, thus laying the foundation of the realisation of all the potentialities of their personality.

Apart from instruction in the traditional subjects, pupils acquire also basic knowledge of work in general production, technology and economics

as well as basic skills.

At present, the GDR's 6,000 secondary schools are attended by more than 2.5 million children. Over 200,000 teachers work there in some 110,000 class rooms, almost 54,000 of which are special-subject cabinets and 9,000 workshops. Material conditions and staff qualification at secondary schools have steadily improved during the last few years.

One-third of all class rooms existing at present have been built during the past ten years. Schools have been equipped with modern teaching aids worth 1,200 million marks.

Polytechnical lessons are given by about 8,800 fulltime and 25,000 part-time instructors, apprentice instructors and skilled workers at over 5,000 enterprises in industry and agriculture. To this end, over 1,400 polytechnical centres with some 3,400 special-subject rooms have been established.

Pupils have multiple opportunities to apply and deepen the knowledge and skills acquired at school according to their inclinations, interests and talents. For instance, students attending classes 9-10 have a wide choice of extra-curricular study groups specialising in 32 subjects, which include electronics, microbiology, astronomy, astronautics, environmental policy, literature and visual arts. Such interest groups are run by teachers or other qualified personnel, and are attended by almost 50 per cent of all pupils.

Secondary schools include an adequate number of specialised schools and classes which have a twofold objective. Firstly, they are designed to promote, at an early stage, pupils with special skills and talents. Secondly, they help meet the demand for highly qualified specialists needed in the economy, in science and elsewhere. Graduates receive the ten-class secondary school-leaving certificate or a school-leaving certificate qualifying for admission to an institute of higher learning. Instruction in all subjects is based on secondary school syllabi. In the special subjects the subject matter taught is more comprehensive and the number of lessons greater.

#### CARE OF THE HANDICAPPED

Children and youth who are physically or mentally severely disabled are given optimum opportunities of training and education in special schools according to what their condition permits them to do. There are 550 special schools for children and youth with impaired hearing or sight, with speech defects, for the mentally retarded and physically handicapped. They offer favourable conditions to develop their personality and help them to meet the requirement of life. Where necessary, special schools are complemented by pre-school institutions, advisory centres, vocational training classes and boarding schools. Special care for and assistance to disabled children in education, training and extra-curricular activities are ensured through the employment of specially-trained teaching staff and the provision of specific curricula, textbooks and teaching aids.

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As required by law, all leavers of special schools are guaranteed an appropriate form of vocational training and a suitable job. Educational and other programmes at school are complemented by meaningful and interesting extra-curricular activities.

# Germany, Federal Republic of

Total	Population	Children	(0-14)	Per cent
	(in n	nillion)		
1975	61.80	13.47		21.8
2000	66.24	13.57		20.5

THE TERRITORY of the Federal Republic of Germany including West Berlin has an area of 248,576 sq. kms. At the end of 1972 there was over 61 million people in this territory.

The population's age structure matters greatly in providing for the vital needs of the people. The social requirements of the various age groups differ considerably. According to the 1971 statistics the different age groups of the total population of the Federal territory were in the following proportion:

Young generation (up to age of 21)	19 million (31 per cen	t)
Gainfully employed generation	34 million (56 per cent	i)
(21 to 65 years old)		
Older generation (65 and over)	8 million (13 per cen	1)

The Federal Republic's constitutional order is laid down in the Basic Law promulgated on May 23, 1949. Although the Basic Law has undergone many modifications, it has remained unchanged in essence. The Basic Law is the foundation of the State system and also of the social services system. It contains important fundamental conceptions about man, about human society and the state community. It is the platform from which is determined the relationship between the centre (Bund) and the federating states (Laender), between the state and society, as well as the distribution of social responsibilities and burdens.

Marriage and family are protected by the state system. It is the natural right of parents to care for and educate their children. Only by law may children be separated from their parents, *i.e.*, if those responsible for ensuring their education fail or if there is a danger of neglect for other reasons. The priority of parental responsibility is not only protected against state interference; the state offers considerable positive help to strengthen the exercise of parental responsibility. This is done chiefly within the framework of the children's and young persons' welfare services.

It was a special concern of the Basic Law to secure by legislation for illegitimate children the same conditions for physical and psychological development and for their position in society as are enjoyed by legitimate children. This claim has been fulfilled in the meantime by the legislature.

In the Federal Republic the education and training system can be understood only in the light of the concept of man as envisaged in the Basic Law and of the liberal social system. The care and education of children are regarded as the natural right of the parents and as their duty. Here the state has a twofold function. On the one hand it ensures that the right and duty to educate is exercised by the parents or other persons entitled to do so. The state safeguards education only when it is insufficient, and it does so through the good offices of the children's and young persons' welfare services. On the other hand, parents by themselves nowadays are frequently unable for many reasons to discharge the duty of education. In these cases the state must create the prerequisites for a sound development of the young people.

#### SCHOOL AND EDUCATION

The school and educational system in the Federal Republic is the task of the Laender. As the Bund does not possess independent powers in cultural and educational matters, there is no uniform regulation of the school and educational system in the Federal Republic, though it will develop increasingly uniform characteristics owing to joint educational planning on the part of Bund and Laender. Without prejudice to the federative order, a need for more intensive coordination of the school and educational systems of the Laender has arisen, not least in view of the mobility of the population.

In all Federal Laender there exists a general education and a vocational school system. In accordance with the Laender constitutions and the school laws it is generally compulsory to attend at least an elementary and a vocational school (elementary and vocational school attendance obligation). Compulsory school attendance begins with the completion of the sixth year and lasts 9 years. To start with, every child has, during the first four years, to attend the junior elementary school. There, all children are instructed together. Attendance at a junior elementary school is followed by that at the senior elementary school, which is compulsory for all children who do not change over to a secondary school. Denominational schools which were widespread in the Federal Laender until a short while ago, have been replaced of late by non-denominational schools in agreement with the churches under certain conditions.

After the completion of four years of primary school education, the parents have a choice. They can either leave their children in the elementary school (senior school) or send them to secondary schools. The 'gymnasien' (a kind of grammar school) are regarded as such. Their purpose is to impart an extensive fundamental education which, as a rule, stretches over nine

school years. It ends with the matriculation examination which qualifies for university attendance. 'Gymnasien' with a vocational slant are the business 'gymnasien' (Wirtschaftsgymnasien) and technical 'gymnasien'. A lower grade secondary school, the intermediate school (Mittelschule) also called 'Realschule', is a category in between elementary school and 'gymnasium'. It is also built upon the primary school basis, extends generally over six school years, and is intended to provide an education for so-called medium-grade jobs in administration, trade and industry and technology.

Special schools have been set up for children who are so handicapped physically, mentally or emotionally that they cannot follow the general tuition given in the elementary schools. The objective of these special schools is to enable children by specific care and support to attend ordinary schools and, in the case of severe handicaps, to give them the best possible preparation for life and employment. The 'special school system' is extremely differentiated so as to allow for a better adjustment to handicaps. It is in the process of being extended, particularly in rural areas. For school age children who live in homes for the handicapped, special hostel schools are usually provided.

The 1922 Act on Public Assistance for Minors, particularly in the versions of the 1961 and 1970 amendments, comprises under the designation 'Youth Welfare Services' (Jugendhilfe) all the forms of help required by young persons—when not at school or at work—for their education and the full unfolding of their personality, and which require the cooperation of the state. Hence this Act is the most important legal basis of the youth welfare service.

## THE YOUNG PERSON'S RIGHT TO EDUCATION AND ASSISTANCE

In accordance with the above-mentioned Act every young person has a right to be educated to achieve physical, mental and social fitness. This right to education should not be viewed only in the light of the parental duty to educate, but rather as the young person's own right, under the Basic Law, to the full development of his personality and thus also to his own right to education. In present day society the young person's requirements for developing his personality fully and for becoming socially efficient can no longer be met by the parents alone. The state and society together fulfil important complementary tasks in bringing about a healthy development and maturing of the young people. Essential general foundations for education and training are provided in the schools and occupational training establishments. However, beyond this, in forming his personality a young person needs to be given further assistance to develop and mature on his own and also to master many difficulties in his development. The youth welfare services have been given the task of providing this assistance. Young people have a right to this assistance. In the course of the reform of the Act on Public Assistance for Minors efforts

are being made to put this right into practice by admitting a claim to certain benefits of the Youth Welfare Services (298).

#### AIMS OF YOUTH WELFARE SERVICES

The 1922 Act on Public Assistance for Minors arose first of all from the urgent necessity of remedying educational distress due chiefly to lack of parental help in children's education. The Act thus lays down that the youth welfare services must act insofar as the child's claim to education by the family is not fulfilled. Thus the youth welfare service was originally envisaged primarily as a protection for young people. But today the efforts of the youth welfare services are in no way confined only to alleviating such individual distress situations. Rather they extend to all young persons who need help or support even if their parental home is intact.

The extended field of the youth welfare services covers: (a) protection of foster children; (b) cooperation in the guardianship system; (c) curatorship and official guardianship for illegitimate children; (d) assistance in cases education is at risk or is impaired (child guidance, educational advisory guardianship, voluntary educational assistance, etc.); (e) jurisdiction over juveniles and assistance to juvenile courts; and (f) help in probation service of the young offender.

# Japan

Tot	al Population	Children (0	-14) Per cen	t
	(in mill	ion)		
1975	111.57	27.34	24.5	
2000	132.93	26.65	20.0	

SOCIAL DISORDERS immediately following World War II gave rise to various social problems such as the disruption of homes and family ties, and an increase in the number of vagrant children. Systematic programmes for the protection of children were urgently needed. Hence the Child Welfare Law was enacted in 1947. The event was epoch-making in the field of child welfare in this country in that it discarded the old definition of child welfare as merely a relief to the needy and proclaimed child welfare programme as an attempt to promote welfare of all the children in healthy development into adulthood. In 1951, the children's charter came into existence to serve as a torch light in the field of child welfare.

In the Child Welfare Law the following three points are given as the basis of child welfare:

1. All people shall endeavour to bring up their children so that the

- children will have healthy minds and bodies.
- 2. Each child shall have an opportunity for security of life and the necessities of life.
- 3. The state and local public bodies as well as the guardians of the children shall be responsible for children's healthy growth in mind and body.

The administration of the Child Welfare Law is vested in the Children and Families Bureau of the Ministry of Health and Welfare in the National Government, and the Women's and Minors' Section of the Welfare Department in each prefectural and local government. To work with the government on various levels, there are:

## Central Child Welfare Council

The Central Child Welfare Council and the Prefectural Child Welfare Councils have been established respectively in the National Government and in each prefectural government in order to evaluate and study programmes and needs of children, as well as expectant and nursing mothers. The Councils may answer inquiries from, or express opinions to the Minister of Health and Welfare, or their prefectural governors in policy-making. The Councils may make recommendation in planning welfare programmes and in their coordination. Local governmental bodies such as cities and towns may establish their own councils.

## Child Guidance Centre

As of May 1977, there are 153 child guidance centres throughout the country established by prefectures and designated cities. In the centres services for counselling, adoption, and institutional placement are offered. There are also facilities for detention for those children who are under observation and study. During the fiscal year of 1977, the number of cases received at the centres was 246,992. There are professional workers of many disciplines: medical doctors, psychologists, social workers and others. The social workers working there are called Child Welfare Officers.

# Child Welfare Officers

The child welfare officer is to give professional counselling service to children, expectant and nursing mothers in the child guidance centre. They are directly responsible for diagnosis and treatment. Their qualifications are prescribed by the law. The total number of child welfare officers is 991 in May 1977.

# Volunteer Workers in Child Welfare

The volunteer worker in child welfare cooperates with the child welfare officer and the welfare secretary in the local community. The volunteer

worker in child welfare concurrently assumes the duty of a volunteer worker in child services (Minsei-iin). There are about 160,000 volunteer workers as such throughout the country.

## Welfare Secretaries

Welfare secretaries also assume responsibility for the welfare of children in their assigned community as a part of their duty. They conduct investigations on the living environment of individual children and offer counselling services.

#### **PROGRAMMES**

The programmes for child welfare may be divided into two categories: programmes for children in need of protection and preventive programmes for the healthy development of children and mothers.

## Programmes for Children in Need of Protection

Any person discovering an orphan or vagrant child, a child suffering from ill-treatment, or in any other similar situation, shall report the case to a child guidance centre or a welfare office. The child guidance centre shall, depending upon the findings of an investigation and the diagnosis regarding the problems of such children and their families, recommend any of the following procedures:

- 1. Advise the child's guardian and the child, or make them sign oaths that proper care be taken at once.
- 2. Appoint a guardian for the child or place the child under the supervision of a child welfare officer, volunteer worker in child welfare, or welfare secretary.
- 3. Place the child in a foster home, or with foster parents primarily responsible for his vocational training.
- 4. Place the child in a child welfare institution.
- 5. Recommend medical treatment at a designated medical agency, or supply orthopaedic appliances if necessary.
- 6. Recommend that a child be admitted to a day nursery.

# Preventive Programmes

For the purpose of prevention of infant mortality, various measures have been taken. Every expectant mother is required by law to report to the office of the mayor of the local municipality. The prefectural governor's office shall then issue a maternal and child handbook to her. She may use free of charge the various services offered by a local health centre such as regular health examinations, counselling on diet, study programmes for maternity care, and so on. After the 2nd World War many mothers' groups have been

organised with the help of the local government to learn how to take care of their children.

In 1958 a new project of establishing maternal child health centres was started in selected areas. This was in fact an enforcement to the existing maternal and child health activities by the local health centres. The workload of such health centres in the field of public health had been so much increased that it was considered advisable to create special centres to deal with maternal health. The physical facilities of such new centres include those for health guidance, family planning advice, nutrition guidance, and facilities for delivery with about five beds. The delivery facilities are for the purpose of providing care for those who are in need and not able to pay for themselves. As of March, 1978, there are 680 centres as such in the country.

Other activities for maternal and child health include health examination for one and half-year-old and three-years-old children at the local health centres, close examination on mental development of three-years-old children at the child guidance centres, provision of medical care for children, etc.

Another aspect of preventive measures in child welfare includes an effort to eliminate unhealthy literature for juveniles. The Central Child Welfare Council is given the authority to make recommendations on films, books, and other cultural materials.

There is a growing interest among concerned citizens, especially in urban areas, in providing healthy recreational activities for children. Children's clubs and groups are being formed in various communities under the voluntary leadership of interested adults and young people, and their numbers are increasing rapidly. There is a great need to promote healthy activities for children by providing them with adequate leadership and facilities.

Some of the oustanding youth organisations in this country include: boy scouts, girl scouts, junior Red Cross, 4-H clubs, ocean youth association, YMCA, YWCA, and others.

It is widely recognised that every child needs to be in a family where he belongs, and to be reared by his own parents. But in cases when a child must be separated from his natural family because of various circumstances, measures must be taken to accommodate him either in an institution, a foster home, or a vocational guidance foster home. In each case, the placement must be approved by the prefectural governor who is legally authorised to make the decision. A foster home is a home where a couple and a child acquire all the responsibilities and privileges of the natural child-parent relationship. Foster parents may hope to adopt the child in future, or they may want to do only what is possible for his immediate welfare. The number of foster homes registered was 9,714 in March 1978, and 2,980 homes took care of 3,557 children. From 1974 fiscal year short term foster care programme was developed for the need of short term foster care caused by mother's inhospital treatment, etc. The number of short term foster homes registered in

March 1978 was 584 and 183 children were taken care of. These placements are supervised by child welfare officers.

#### CHILD WELFARE INSTITUTIONS

Children who are orphans, who are not able to live with their parents, and who are not under normal parental care because of parents' having to work for living, need special assistance. Children with physical or mental handicap also need special care. As far as possible they are kept at their own homes and are given financial assistance from local governments and counselling service by child guidance centres. At the same time, institutional care is also provided whenever necessary or advisable.

As of October 1977, there were seventeen types of child welfare institutions as listed in the next page.

Children's Allowance Law passed the Diet in May, 1971 and was enacted on January 1, 1972. This was one of the most important systems in social security which remained to be enacted, and voices for it had been raised frequently and strongly among the people.

The purpose of this Law is to contribute to the stability of family life and to promote the healthy bringing-up of children under the age of 15, who belong to the families with three or more children under the age of 18.

Children's allowance of Yen 5,000 a month per child except for two children (as from October 1978, Yen 6,000 for those of low income families) is granted to the person who takes care of and lives together in one household with three or more children.

But, for those persons whose income is over the amount prescribed by the Cabinet Order according to the number of dependents, this allowance is not granted.

The cost necessary for this allowance is met by: for the dependents of the employee, 70 per cent by the contribution from employers, 20 per cent from the national treasury, 5 per cent each from prefecture, and city, town or village; for the dependent of the non-employee, four-sixth of the cost by the national treasury, and one-sixth each by the prefecture, and city, town or village.

But, for the dependent of a public employee, the cost is met by either the central government, the local government, or public corporation.

This system became fully effective from the fiscal year 1974 and before that date the person covered by this Law was extended gradually; and as from January 1, 1972, the person covered was 5 years old or less; and as from April 1, 1973, 10 years old or less.

# CHILD WELFARE INSTITUTIONS IN JAPAN

(as of October, 1977)

	Type of Intitutions	Number of Institutions	
Maternity Home	—For expectant mothers who are unable to provide for their own care.	992	7,614
Baby Home	—For the care of infants under one year of age.	125	4,239
Mothers' Home	—For widows with children	401	7,979
Day Nursery	—To give daily care to infants and preschool children while their parents are at work.	19,794	1,895,320
Children's Centre	—To give informal education and recreation.	2,325	
Children's Home	—To protect and care for children without guardians, or those who have been maltreated.	530	35,110
Home for Mentally Retarded Children		352	26,237
Mentally Retarded Children's Day Care Centre	—To give daily care to the mentally retarded who come from their own homes.	200	7,545
Home for Blind Children	—To give care and education to totally o partially blind children.	r 32	1,721
Home for Deaf and Dumb Children	—To give care and education to the deaf an mute, or those with severe hearin difficulties.		2,247
Home for Physically Weak Children	—To provide physically weak children wit proper environment and good physica care.		1,944
Hospital-Home for Crippled Children	—To give them medical treatment, physical therapy, and education.	al 76	9,614
Physically Handi- capped Children's Day-Care Centre	—To give daily care to the crippled who com- from their own homes.	e 49	2,065
Hospital-Home for Severely Handi- capped Children	—To give the special care to severely physically and mentally double-handicapped children.		4,865
	—To aim at treatment of emotionally disturbed children mainly under 12 years of age who show antisocial, predelinquent a-social or neurotic behaviour.		500
Home for Juvenile Training & Educa- tion	<ul> <li>To train and guide juvenile delinquents, or potential juvenile delinquents.</li> </ul>	58	5,283
Children's Play- ground	—To give children the places to play.	3,780	

#### The Netherlands

	Total	Population	Children (0-14)	Per cent
		(in mil	llion)	
1975		13.65	3.51	25.7
2000		16.01	3.50	21.9

THERE IS a long history of Dutch social security; provisions on an overall national basis go back to the turn of the century. The principle is now established that adequate and comprehensive legal social security provisions must be maintained to cover the entire population, or at least all residents. The history, organisation, financing and operations of the component schemes are quite complex. But briefly we can state that adequate security is provided against incapacity for work, children and sickness expenses, unemployment and old age retirement, and for widows and orphans.

There are almost 4.5 million persons under age in this country. Child care and protection is involved with about 45,000 children.

There are different ways by which a child comes into care or under protection but this is almost always *via* judicial channels. Group names came into existence over the years. Thus one speaks of:

- 1. children under guardianship (c. 18.300);
- 2. children under family guardianship (c. 19.000); and
- 3. juvenile offenders which have been punished (c. 5000).

In order to obtain a clear view, the three groups of children under care and protection are dealt with separately here.

During their minority all Netherlands children are subject to authority. This authority over persons of under age presents itself in two ways: parental rights or guardianship. As long as the situation in a family is normal, as long as no extraordinary circumstances occur—and fortunately this is the case with the overwhelming majority of our families—the children are under the parental rights. This means that both parents take care of their children and educate them, and that the father administers any property the child may have. He represents the child with third parties.

The parental authority comes to an end, whenever the parents' marriage is dissolved. Upon the death of one of the spouses, or in case of divorce, the marriage no longer exists, which ends the parental rights at the same time.

From then on, the minor children of a family, subjected to such a change, are placed under guardianship. After the death of one parent the guardianship is entrusted to the surviving parent; after divorce, the judge appoints one of the two parents to be guardian. Although this group of children from defective families are the victims of circumstances, they are,

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nevertheless, not considered children under care and protection; they are not 'children under guardianship' in the sense this word has acquired in practice.

We only speak of children under guardianship if it concerns minors whose parents were deprived of parental rights by the government. These minor children are placed under the guardianship of a third party. As a rule guardianship societies are charged with these guardianships.

#### CHILDREN UNDER FAMILY GUARDIANSHIP

Those concerned with child care and protection have learned much from the application of civil law measures by virtue of which parents lose their rights and children are reared as children under guardianship. Over the years, a keener understanding has developed as to the cases presenting themselves for help under the existing legal rules. It was also discovered that a category of children exists whose parents were not to be considered for release or removal, but who were, all the same, in an unfavourable situation, one in which there is the threat of drifting from bad to worse. So as to refine the existing system, 1921 saw supervision incorporated into the law (in force in 1922), placing these minors within the reach of the judiciary.

Supervision, sometimes also called family guardianship (unfortunately the latter word is confusing because it suggests that the whole family is under supervision), can be ordered, if a child is threatened with moral or physical danger. The measure of supervision implies that the child will be assigned a family guardian for the period of one year. The family guardian will, besides the parents—who keep their parental rights—give leadership to the child. The intention is that, through the positive collaboration of the family guardian, parents and child, the moral and physical danger will be pushed back and, if possible, will even disappear entirely.

The children under official supervision are called children under family guardianship; for some years they have contributed the biggest category of children under care and protection. The attractive feature of supervision is that, in principle, children and parents can stay together during the period of supervision, and parental rights are not taken away. However, it is not always easy for parents of supervised children to accept the authority of a family guardian. It is understandable that the family guardian concerned must have patience and tact.

The measure of family guardianship is decreed after a civil law procedure; this may be the case where the child is endangered, without the child himself having committed a punishable act. This also applies, if the child is not yet 12 years of age, for 12 years is the age at which children's penal law can be applied.

Supervision by virtue of penal law is imposed when the punishable act shows a symptom of the attitude in life of the — mostly somewhat older—

child which harbours dangers for the future. We leave the 'children dealt with under civil law' here and arrive at the third category of children, viz., those whose criminal prosecution is considered.

#### JUVENILE OFFENDERS

For the sake of clarity some rounded figures should be mentioned here. Besides more than 4,000 minors, found guilty of an offence, there are more than 5,000 children who are suspected offenders, but who are not prosecuted, and this on a yearly basis.

About 25,000 children are annually found guilty of a law violation, whereas about 7,500 minors are suspects in such cases, without being prosecuted. It is interesting to note these figures as a matter of comparison; it would, however, go too far to brand these thousands of young offenders as children under care and protection. Of course, among them one finds a number guilty of serious offences, such as hooliganism or drunkenness in public. However, the great majority of them commit traffic offences, which in themselves do not make a child a subject for child care and protection. Let us, therefore, return to that group of more than 4,000 children found guilty of an offence.

Contrary to the children under guardianship and family guardianship, who may be at any age between 0 and 21 years, we find in the category of children committed by the courts only those between 12 and 18 years. If the personality of the youthful offender would seem to make it preferable, a penalty or correctional measure according to the Children's Acts may be imposed until the age of 21. Apart from the above, it is also possible in special cases that a minor, over 16 years of age, stands trial on the basis of the penal law for adults. Naturally, this exception is only applied if the young person concerned has committed a very serious crime and at the same time does not any longer show anything childlike in the make-up of his personality.

The juvenile offenders comprise the last group of children under care and protection. However, they are not a homogeneous group, for the offences they commit are dissimilar, although the offences against property dominate in children's criminality; their personal circumstances are different and, finally, there exists an extensive range of trial possibilities.

Thus the children's judge has the choice of punishment or of taking other measures. It is not a simple matter to say when a juvenile delinquent will receive punishment or when other measures will be taken against him. Very generally, one may say that punishment is meted out, when a short, firm and limited correction seems in order. The idea of other legal measures is to change the child's whole outlook on life. Therefore, other measures have a less defined character than punishment. In practice, they are sometimes experienced as heavier than punishment, contrary to what one would expect from the word 'measure'.

The system of punishment and other measures relative to juveniles has been embodied in the law since 1901, and became operative in 1905.

## ON THE PART OF GOVERNMENT

The application of the Children's Acts and the regulations attached thereto belong to the field of activities of the Ministry of Justice. The directorate of child care and protection of this Ministry is particularly charged with this work. The different facets of the duties of this directorate are: a supervisory duty, a subsidising duty, and an executive function of its own.

Each district has a council for child care and protection, consisting of a council, composed of non-salaried members, appointed by the Crown, and a bureau with salaried professional personnel. The council's secretary is also the director of the bureau. He or she is the tie between the policy-making part

of the council for child care and protection, and its executive part.

It is intended that the council creates a centre of child care and protection within the district, from which a stimulating counselling force emanates. Unfortunately, at this moment the councils are so overburdened by their other duties, that the central function has not been able to prosper fully. The council compiles informative reports to the courts. These reports may relate to matters of civil law, such as the removal or release of parental rights or guardianship, the custody of a child after divorce, supervision or adoption, etc., but the council also submits its reports in penal cases.

The council may appear as a party in the action, by which maintenance contributions are requested (e.g., on behalf of children, after the parents' divorce, or in a paternity suit). Moreover, the council has an important task

in collecting these funds.

Of all other duties performed by the councils, the temporary care of children, entrusted to the council for child care and protection by the court or the public prosecutor, should be mentioned (c. 2000 children).

The council is a kind of gateway-building. All minors have to pass through this gateway before they are 'children in care and protection'. All private institutions in this field have contacts with the council.

# **Tanzania**

Total Po	pulation	Childre	en (0-14)	Per	cent
	(in mi	e el foliación de la compa			
	4.70		90	46	35 - 55
2000 34	4.00	15.	50	45	.6

IN TANZANIA, in the home, children are seen as the responsibility of the mother. Very often the father does not involve himself in their

up-bringing. At government level, children are seen as the responsibility of certain ministries; either the Ministry of National Education or the Ministry of Labour and Social Welfare. Tanzania is yet to recognise in practice that children are the responsibility of the whole nation. The operations of every ministry affect the children, and there is need to take care that the state's activities take the needs of the children into account.

For example, when Tanzania decides on a scheme to expand the cultivation of cash crops in villages, it is important to ask whether in so doing the cultivation of millet, peas or groundnuts which have previously ensured good health for the children will be reduced. And if such a reduction in food growing is likely, is the country quite sure that the extra money earned from cash crops will be spent on buying good food for the children, rather than on more cattle, or on getting drunk? If such a danger exists, how to adjust the programme?

In village Butima, for instance, they are producing and selling milk to a dairy plant. But it is beginning to appear that they have started to sell all the milk. They are not keeping some for use at home, especially for the use of the children. This mistake has yet to be corrected.

Again, when the state decides to establish an industry, it is not asked whether working mothers will find it easier to look after their small children if there is one large factory or two small ones.

From earliest times it has been known that care of the child begins with the care for the mother. Therefore consideration of a woman's health traditionally began even before conception, because it was realised that frequent pregnancies harmed the health of both the mother and the children. The importance of child spacing was not discovered by UMATI. It has been known for a very long time. (UMATI is the local organisation for family planning and responsible parenthood).

Similarly, Tanzanians knew the importance of good food for expectant and lactating mothers. It is true there were some food taboos, and some of these were without foundation. Nonetheless, the importance of providing nutritious food for mothers was recognised. Nowadays, they can use modern methods of child spacing. Parents can learn about these methods in the maternal and child health (MCH) clinics which are now available in many health centres, dispensaries and even hospitals. At the same time, pregnant and lactating mothers can get education about appropriate food while attending the clinics.

Tanzania realises the importance of maternal and child health clinics. Therefore, one way in which Tanzania will be participating in the IYC will be to open more clinics of this kind. More than 200 new clinics will be opened in 1979.

Tanzania is aware that children should have a better chance of growing up than they now have. And health is not just a matter of attending the clinic at the right time and having the necessary vaccinations. It is the

balanced diet and general cleanliness which are the strongest protection against disease. And these things are increasingly within the Tanzanians' ability.

Tanzanian children who die from malnutrition, or from illnesses which cause death only because the child is undernourished, are more often victims of ignorance and failure to plan properly than of any actual shortage of good. Mostly, the food necessary for the health of the mother and the child is available, but it is not used either because of ignorance or because of traditional taboos which have no meaning or truth. One of the tasks of Tanzanian doctors and nurses, agricultural extension officers and primary school teachers is to give help in teaching and explaining the kinds of food needed for good health, and how to prepare and preserve them. The Tanzanian food and nutrition centre publishes booklets and a journal from which village leaders and all who have learned to read through the adult literacy campaign can know more about these matters. This centre also organises seminars, courses, and studies on all the matters related to nutrition—including the importance of cleanliness.

In the past four years, Tanzania has made very great progress in providing primary education for all school-age children. But much has yet to be done to provide facilities for schooling with enough classrooms, books, materials, teachers, and food. 'And food' is important.

In some of the Tanzanian villages one of the biggest problems, especially in primary schools, is that many children get no food in the morning. They leave their homes on empty stomach and there are no arrangements for feeding them at school. During the IYC there is a proposal to provide children with something to eat, either before going to school or at school.

There is need to have day-care centres or nursery schools organised and run by the village or by the women working through the Union of Tanzania Women (UTW). Such centres could be of very great importance, for they can ensure that children are properly looked after while mothers are working on the farms or elsewhere. During the IYC there are proposals to increase the number of these centres everywhere—in the towns and in the villages. Such centres would at the same time ensure that the children get good food.

# ORGANISATIONAL STRUCTURE

In order to facilitate the realisation of the main objectives of the IYC—to encourage raising significantly the level of services benefi ing children on a permanent basis—specific structures have been set up at different levels.

A National Committee for the International Year of the Child (1979) was formed at the end of 1977. The National Committee is a policy-formulating/decision-making body on IYC matters. An advisory and planning subcommittee has also been formed. Composed of technocrats in child-related issues, the sub-committee is responsible for the drawing up of guidelines for

submission to the National Committee for recognition and approval. It is also responsible for the interpretation of policies determined by the National Committee.

The National Committee and the Prime Minister's office have agreed on the need to establish regional IYC committees both on the mainland and on the isles. These committees will be chaired by the regional commissioners, who are also the regional party secretaries and will comprise regional functional officers and all the regional functionaries of the party affiliates, *i.e.*, youth, women, parents and workers' organisations. The functions of these coumittees will be similar to those of the National Committee, but at the grassroot level. The regional commissioner will submit plans and recommendations on child-related issues to the Prime Minister's office, and a copy to the IYC secretariat, in order to enable the National Committee to appreciate and do something about existing conditions affecting children at all levels.

There are a number of programmes that have been identified for implementation during and after 1979. The implementation of each programme will be the responsibility of more than one sectoral ministry or organisation, in accordance with the overall desire to assume an integrated approach to the rendering of services benefiting children.

Some of the more important programmes are stock-taking activities. These are mainly studies in different aspects of children's programmes. These are aimed at providing information on the situation of children that would be critical for government policy determination/consolidation, for decision-making, in programming and for effective project management. It is planned that studies be undertaken on the following areas:

- (i) Study on the legal rights of the child and its mother: Work on this study began during the final quarter of last year. Presently, the field research is in progress. It is hoped that by the end of July, Mrs. Jane Kikopa, who is the principal researcher, will be able to present a draft report. Mrs. Kikopa is Assistant Lecturer in Family Law at the University of Dar es Salaam.
- (ii) Towards the establishment of minimum conditions for optimum child care in Tanzania through nursery schools/day care centres: A study: The principal researchers for this study are Prof. C.K. Omari, Head of the Sociology Department and Prof. I.M. Omari, Head of the Education Department at the University of Dar es Salaam. Work on this study is also well under way. A congress on early childhood education is planned for in connection with this study in December, after which a full report with recommendations will be submitted to the National Committee, for approval and adoption.
- (iii) Other areas to be looked into include road safety for children.
- (iv) A study on juvenile delinquency: work on this project is well under way.

- (v) A study on handicapped children.
- (vi) A study on the health and nutritional status of children and youth (up to primary school, i.e., 15 years); position paper being compiled.

One of the major constraints to the success of development programmes in Tanzania as a whole and IYC projects especially at this point and time is lack of funds. To-date, the National Committee does not have any funds for supporting any of the programmes identified. Efforts are under way to secure the necessary go-ahead from the party for the Committee to launch a fundraising programme.

Meantime, Tanzania is concentrating its efforts on the consolidation of policy affecting children, because in principle this exercise is a basic requisite. Besides, it should not entail a lot of funds. Once this is accomplished, and the full integration of programmes benefiting children is achieved, it is hoped that the actual implementation of the projects would subsequently fall in line with the overall national development programme.

# Child Welfare Developments in Indian States

## Bihar

A CCORDING TO the 1971 census, Bihar has 23.51 million children, i.e., about 42 per cent of the total population of the State. 11.92 million children belong to the age group 0-6. 81 per cent of the children reside in villages.

General education of children is looked after by the education department of the State which has taken up several schemes for implementation in the Sixth Plan.

At the elementary stage of education, emphasis would be on extending education to non-attending children, reduction of wastage and stagnation, and raising the attendance rates. Special attention would be paid to the education of girls and of children belonging to the scheduled castes and scheduled tribes, weaker sections of the society and backward areas children to remove the imbalance in social and economic development.

At the secondary and university stages of education, emphasis would be on the normal development and consolidation of facilities rather than expansion. Programmes would be drawn for the provision and extension of students' welfare facilities, including scholarships and hostel facilities and for the separation of post-secondary classes from the universities to make teaching in them more meaningful through reduction of the students in the universities and degree colleges.

Towards vocationalisation of education, non-academic courses of terminal education and training (flexible in terms of duration, subject content and organisation), which are employment oriented and directly useful to the students, would be made available to the extent possible so that post-middle and post-high school leavers may be prepared for employment. Efforts would be made to dovetail these courses with the rural development programmes.

In order to attract children for regular schooling, pre-school classes are being added to all the primary schools in the 263 low literacy blocks where the percentage of literacy is up to 15. These classes would be equipped with play equipments and other accessories required for running pre-primary classes on montessori and kindergarten basis. Besides, 5 model pre-primary schools are proposed to be established in each district. The existing pre-primary institutions would be given financial assistance for their proper and efficient functioning. An outlay of Rs. 100 lakhs is proposed for the purpose.

The take off position of enrolment in the age-group 6-14 at the end of 1977-78 is far behind the goal of universalisation of education. Out of the eligible population of 13.12 million children, only 7.47 million children have been enrolled, giving a percentage of 56.92 (77.69 per cent boys and 34.86 per cent girls.)

The enrolment of scheduled caste and scheduled tribe children, as compared to the enrolment of children of all communities, in the State, is also low. In 1974-75 only 34.1 per cent of scheduled caste children in the age group 6-11 were enrolled, as against 58.53 per cent children of all communities. Similarly in the age group 11-14, the percentage of enrolment of scheduled caste children in schools was only 11.2, as against the State's average of 24.67.

To achieve full enrolment of children in the age group 6-14 during 1978-83, 6.44 million additional children, 1.93 million boys and 4.52 million girls, will have to be enrolled during the period, since the population of children in this age group would grow to 13.91 million, 7.18 million boys and 6.73 million girls. According to the recommendations of the working group on universalisation of elementary education, a target of 90 per cent has been set for the 1978-83 plan, 96 per cent boys and 84 per cent girls. However, in the background of the achievements made, and the physical and financial resources in sight, it may be not possible for the State to achieve 90 per cent enrolment by 1982-83. In view of this it is proposed to enrol only 2.78 million additional children, 1.14 million boys and 1.64 million girls, during the plan 1978-83 raising the percentage of enrolment to 73.68, 89.10 boys and 57.23 girls.

Out of the 2.78 million of additional children proposed to be enrolled, 2.06 million would be covered under the formal schooling system and the rest 0.72 million through the non-formal system. Thus it is proposed to cover 74.27 per cent of additional children under the formal schooling system and 25.73 per cent under the non-formal system.

Under the non-formal system of education, an additional 0.72 million children, 0.32 million boys and 0.37 million girls, are proposed to be covered. Children of the age group 6-14, who have either dropped out or have never attended schools, would be mainly covered under this system of education.

The welfare department looks after the education of the children belonging to backward classes, the nutrition programme and other problems of general children also.

Promotion of girls' education would be possible only if they are encouraged to reside in hostels. It is, therefore, proposed to introduce a new scheme for giving hostel grants at the rate of Rs. 60 per month to scheduled caste girls. An outlay of Rs. 14 lakhs is proposed to benefit 1,940 girls with a sub-plan component of Rs. 1 lakh to benefit 1,453 girls in the area concerned.

All scheduled caste students are not yet getting stipend due to paucity of funds. Book grants are, therefore, given to such students as are not awarded stipends. During 1978-83, it is proposed to cover 175,000 students at a cost of Rs. 17.50 lakhs, out of which a sum of Rs. 4 lakhs is proposed for the

sub-plan, the latter to cover 4,000 students.

To prepare the ground for scheduled caste students, taking up science based technical courses at the college level, it is necessary to build up their science education at the high school stage. It is, therefore, proposed to organise special science coaching for them. Science teachers will be specially selected for coaching the students after school hours, for which they will be paid additional remuneration. The students will also be given grants as an incentive to attend the coaching classes. For this scheme, an outlay of Rs. 22 lakhs is proposed, with the sub-plan content of Rs. 2 lakhs.

There are 76 residential schools at present; 25 new residential schools will be opened and 19 residential middle schools will be upgraded as residential high schools, taking the total number of residential high schools to 63 by 1978-83. At present, only 17 residential schools have buildings. It is proposed to construct 10 more buildings during 1978-83.

It is proposed to open 150 new hostels during the plan 1978-83 to take the total number of scheduled castes hostels to 250 according to the policy to open at least one hostel for scheduled caste students in each block. Ten hostel buildings will also be constructed during the plan period. For these items, an outlay of Rs. 57 lakhs is proposed, out of which Rs. 3 lakhs is proposed for the sub-plan for opening of 15 new hostels.

There are, at present, three blind schools located at Patna, Ranchi and Darbhanga. Considering the need for such a school in each of the seven divisions in the State, it is proposed to establish 4 more blind schools one in each of the remaining divisions during 1978-83. A sum of Rs. 33 lakhs is accordingly proposed for the purpose, out of which Rs. 14.70 lakhs is proposed for the sub-plan. The existing three schools would be maintained out of the non-plan fund.

There are only two deaf and dumb schools in the State. It is proposed to establish two more schools one at Ranchi and the other at Bhagalpur during the 1978-83 plan period for which Rs. 19.25 lakhs is proposed with a sub-plan component of Rs. 9 lakhs.

Stipends to the handicapped students are awarded by the State Government at the rate of Rs. 25 per month. It is proposed to award stipends to 1,578 students during 1978-83 for which Rs. 3.75 lakhs is proposed. For the sub-plan a sum of Rs. 2.50 lakhs is proposed to benefit 830 such students.

Ill-nourishment of the children, nursing mothers and expectant women has been the main cause for high incidence of mortality among them. It has, therefore, been the endeavour of the government, both at the Centre and the State levels to provide nutritious diets to these groups of population, living specially in the tribal, backward and slum areas.

It is proposed to provide midday meals to 1.20 million children during 1978-83 at the rate of Rs. 50 per child per year. Accordingly, a sum of Rs. 60 crores is proposed for the purpose for the 1978-83 plan.

Over 3,000 nutrition centres are running in the State which feed children

below 6 years of age and pregnant and lactating mothers. Centres are run by voluntary organisations which get an honorarium of Rs. 20 per month. Intensive child development services projects are running in seven CD blocks. Besides, nutrition programme is being considered to be run in 3,200 centres of 50 selected underdeveloped CD blocks, which is expected to cost Rs. 46 lakhs.

The Bihar Children Ordinance has already been promulgated in 1979. Seven special courts and seven boards will be opened during this year to look after the welfare of children.

The health department is mainly responsible for the health of children. Mass immunisation scheme, polio and triple antigen vaccination programmes, health check-up of school going children, etc., are the work done by this department. During the IYC one child division in each subdivisional hospital has been opened for which one paediatrician will be posted.

In order to protect the health, safety and welfare of working children, below the age group of 18, the labour department has been made responsible to enforce the Shops and Commercial Establishment Act, the Factory Act, the Minimum Wages Act, the Equal Remuneration Act, etc.

Juvenile crime is yet another problem which requires adequate attention. The prison department carries out a programme of reformatory school for juvenile officers. This work is now going to be transferred to the welfare department.

# Delhi

THE WORK of child welfare in the Union Territory of Delhi is being looked after by the directorate of social welfare. The activities undertaken by this directorate are mostly covered under the Children Act, 1960. A number of institutions are being run by the Administration. Apart from this, grant-in-aid is given by the Administration to voluntary organisations engaged in child welfare and needing financial assistance.

Realising the immense importance of child welfare, Delhi was in the forefront to implement the Children Act, 1960 which is considered to be an ideal legislation to look after and to reform the juvenile offender and the unprotected and destitute child. Under this Act, separate institutions for boys and girls have been established to provide boarding and lodging, medical care, education and vocational training with a view to rehabilitate them in society as useful citizens. Two observation homes, one for male and the other for female, are functioning as per the provisions of the Act. The statutory institutions established under the Children Act along with their

# present strength are given below:

	Name of the Institution	· · · · · · · · · · · · · · · · · · ·	No. of Benefici-
1.	Observation Home for Boys 1-Ferozshah Kotla, New	Care of neglected delinquent boys pending disposal of their cases before the children's	
2.	Delhi. Observation Home for Girls, A-38, Kirti Nagar, New Delhi.	court/child welfare board.  Care of neglected delinquent girls pending disposal of their cases before the children's court/child welfare board.	33
3.	Children's Home for Boys, Kingsway Camp, Delhi.	An institution providing care, treatment, education and vocational training in weaving, tailoring, welding, wiremen, fitter, barber, domestic science and band playing, to neglected boys committed to its care. It has two village annexes with 25 to 50 children in each where selected children having special aptitude for education are kept. They attend community schools and also participate in recreational and other activities of the community.	
4.	Children Home for Girls-I, Tihar, New Delhi.	Provides education and vocational training in tailoring to neglected girls.	118
5.	Children Home for Girls-II, A, 38-Kirti Nagar, New Delhi.	To provide free boarding lodging, medical, educational and recreational facilities to the inmates between the age group of 0-12 years.	
6.	Home for Mentally Retarded Persons, Kasturba Niketan, Lajpat Nagar, New Delhi.	Provides specialised education training in carpentary and occupational therapy.	46
7.		Educable and trainable mentally retarded Children are provided education and train- ing in tailoring by individualised assignment	
8.	Children Home (Beggars) Boys, Narela.	Education and vocational training in tailoring and arts and drawing for children arrested with beggars and committed by the board.	
9.	Children Home-II Kingsway Camp, Delhi.	To provide free boarding, lodging, medical, educational and recreational facilities to the inmates.	
10.	Special School for Boys, 1, Ferozshah Kotla, New Delhi.	Educational, training and treatment to delinquent boys committed to its care by children's court.	

Besides, there are over 20 voluntary organisations working in the field of child welfare in Delhi.

## FOSTER CARE AND OTHER SERVICES

Foster care service is a relatively new development in the field of child care. It has been recognised that the institution leaves a stigma on the child if he is institutionalised. Institution, howsoever good facilities they may have, cannot be a substitute for the family. Under the scheme, destitute, abandoned and orphan children of tender age are placed under the care of foster parents through the child welfare board. The families which receive the children to bring them up are given an assistance of Rs. 30 per month per child. The benefit of this scheme is that the emotional climate in the family assures a child that he is wanted and this gives the child a sense of belonging. The love and affection showered by the family fills the biggest void in their lives.

With a view to stem the tide of juvenile delinquency two bureaus are functioning. They provide preventive services for children who exhibit predelinquency tendencies or pose behavioural problems. These bureaus work in close cooperation with the family, school and community with a view to identify problem children and find solution by providing a healthy emotional and mental atmosphere.

With the increased cost of living and gradual industrialisation in Delhi, it has become necessary for a large number of women to work in industrial or semi-industrial undertakings to supplement the income of their family. When both husband and wife go for work, there is none to look after their children. For them, 11 (day-care) centres have been started in various localities of Delhi. At a nominal charge, the children are provided care, food and medical care where necessary.

To isolate children belonging to criminal tribes and other oppressed sections from the unhealthy and pernicious environments of their families and to make them good citizens through proper mental development, three institutions, two for boys and one for girls, have been established. The children of these institutions are provided free boarding and lodging, education and craft training. They attend regular community schools and participate in other community programmes. The admission is made purely on a voluntary basis.

For the deaf and mute children, the Lady Noyce school for the deaf and dumb is being run. It has over 500 students. The idea is to give education to the deaf and dumb children so as to make them self supporting. It has facilities for occupational training also and is the first higher secondary school of its kind in India.

For the blind boys, a school was established in 1969. It has facilities for education and training in various useful trades. At present the strength of this institution is 60.

In order to provide monetary assistance to those poor parents who are unable to send their physically handicapped children to school and to provide an incentive to the physically handicapped children for their meritorious performance in studies, a scheme of stipends has also been implemented.

With a view to segregate the children from their leprosy affected parents and to save them from the onslaught of the disease, the Administration has set up three institutions, two for boys and one for girls. The children of these homes are sent to community schools for education. These institutions provide facilities for their physical and mental growth. Intensive medical care is given to each child.

A new home for selected destitute and unattached children, deprived of parental affection, has been started in 1974-75. The aim of this scheme is to give these children a homely and family like atmosphere which is essential for their development. The children will be given individual care and parental affection which is not possible in big institutions.

Nutritive food is provided to about one lakh children in 0-6 age group. The department is running 602 centres in slum areas where nutritive food is distributed daily free of cost.

The integrated child development services project (ICDS) in Delhi was launched in 1975 with the establishment of 100 anganwadies centres in the Jama Masjid area. Subsequently, one more ICDS project was started in Mangolpuri and Sultanpuri resettlement colonies. Five more such projects are being started in the resettlement colonies during this year. About 9,166 nursing and pregnant mothers and 32,523 children are benefited under this project. The scheme envisages a package of services to the 0-6 age group, *i.e.*, supplementary nutrition, health check up, immunisation, referral services, health and nutrition education to children, non-formal education to preschool children and functional literacy for adults.

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# Gujarat

Social Defence activities in Gujarat State cover a wide variety of services meant for the most deserving sectors of our society, viz., the help-less, the destitute, neglected, exploited, handicapped, aged and infirm, those released from institutions, including discharged prisoners, covering all the districts of the State. In a way social defence activities are designed to protect the society from the menacing influence of the evils of anti-social element and to promote the welfare of the vulnerable sections of the community, predisposed to such evil influences. To achieve this goal, the State Government has undertaken various measures, and implements various social legislations for the care, protection, education, training and rehabilitation of the destitute, the neglected and the delinquent children, the foresaken and forlorn and

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victimised women, the distressed and the deprived, physically handicapped, the aged and infirm.

#### DEMOGRAPHIC DATA ON CHILDREN

The Gujarat State was formed in 1960 after the bifurcation of the bigger bilingual Bombay State. The total population of the State as per the 1971 census is 26.7 million of which 13.8 million are males and 12.9 million females. Children in the age group 0-14 years are 11.5 million—boys 6.0 million and girls 5.5 million, *i.e.*, about 42 per cent of the total population of the State.

Out of the total population of the State 18.2 million live in rural areas and the others in the urban. From this we can infer that 50 per cent of the total children population, *i.e.*, 5.7 million reside in the rural areas of the State. Out of the total population of the State 14 per cent belong to scheduled tribes. So 1.7 million children belong to scheduled castes. Out of the total children population 20 to 21 per cent belong to scheduled castes and scheduled tribes.

For dealing with the problem of the destitute, delinquent, forlorn, and controllable children, the Bombay Children Act, 1948 and the Saurashtra Children Act, 1956 have been made applicable to the whole of the State. At present there are 22 remand/observation homes, 6 certified/special schools of which 2 are for girls. Over and above this 26 voluntary organisations have been declared as fit person institutions under these Acts. As a part of celebration of IYC, 1979, one remand home under the Children Act will be established in the tribal areas in 1979 and a provision of Rs. 0.07 lakhs has been made for it in the current year.

Besides the above statutory programme under the Children Act there are 12 voluntary organisations which have been recognised as orphanages. They are playing a very vital role in upbringing, educating and rehabilitating orphan children in the State. The children are admitted in these institutions directly without any order from the juvenile court. These children are provided boarding-lodging, medical and other facilities, free of cost. They also run schools for these children. The *Anathashram* at Surendranagar also runs a primary teachers' training college for orphan children. All these institutions are paid grant-in-aid by the government.

State Government also runs foundling homes. At present there are 3 foundling homes attached to the State homes at Surat, Vadodara and at the reception centre at Surendranagar. Children of unmarried mothers, children found discarded on streets, in trains and in other public places and who are lost and found destitute are admitted in these foundling homes. They should be in the age-group 0 to 6 years.

All the voluntary institutions working for the welfare of children and women have to take licence under the Licencing Act, 1956. At present, there are 44 such institutions working in the State. Out of these, 35 institutions are

working for the rehabilitation and welfare of children. For their development, these institutions are paid building and equipment grants.

To cater to the needs of orphan children, 17 voluntary organisations in the State have taken up the Government of India scheme of welfare of destitute children. Under this scheme, 33 cottages, each of 25 children, have been established and 825 children have been covered under this scheme. As a part of the IYC one cottage type of home for destitute children will be established in tribal areas and Rs. 0.50 lakhs have been provided for it.

#### WELFARE OF PHYSICALLY HANDICAPPED CHILDREN

Various activities for the education, training and rehabilitation of physically handicapped children are carried out by the State Government and voluntary organisations. At present there are in all 55 institutions for this purpose. Out of them, 9 are run by the Government and 46 by voluntary organisations, the details of which are as follows:

Sr. No.	Category of Institution	No Govt.	Vol.	Total no. of beneficia- ries 1977-78
1.	Institutions for blind children	3	18	864
2.	Institutions for deaf and dumb children	2	17	1,495
3.	Institutions for orthopaedically handi- capped children	2	4	436
4.	Homes for mentally retarded children	2	7	720
	Total	9	46	3,515

A majority of these institutions are residential and they provide free lodging and boarding facilities, in addition to free education and vocational training. Most of these institutions impart training in crafts such as tailoring, carpentary, weaving, printing, cane work, etc. The Tata Agricultural and Rural Training Centre for the Blind at Phansa (Dist. Valsad) imparts training in agriculture, horticulture, gardening, dairy-farming, poultry-farming, etc. Physically handicapped children are given primary education upto standard VII in these institutions. The secondary school for the blind at Vastrapur (Ahmedabad) and at Sabarmati (Ahmedabad) are imparting education up to SSC level.

The scheme of integrated education for the physically handicapped is being implemented in the State since 1963. Vividlaxi Vidyamandir, Palanpur (Dist. Banaskantha) which is a normal school has undertaken the integrated education programme for blind children since 1963. At present 30 blind children are taking benefit of this scheme.

The municipal corporations of Baroda and Surat are running deaf and dumb schools as part of the normal schools. The deaf-dumb children

participate in common activities like games, crafts, etc., with the normal children. Other special subjects such as speech therapy and audio-visual training are given by special teachers. At present about 60 children are taking advantage of this scheme.

The orthopaedically handicapped children attend the special classes in their own institutions and for other subjects they attend the normal schools. Thus they have been fully integrated with the normal children.

#### NON-INSTITUTIONAL PROGRAMMES

The directorate of social defence has undertaken various non-institutional programmes for child welfare, women welfare, youthful offenders, etc.

Slum areas are the breeding places of delinquency. With a view to provide recreational and psychological help and to inculcate the quality of leadership among the children residing in the slum areas, the department has implemented a scheme of juvenile guidance centres through voluntary organisations on grant-in-aid basis. At present there are 16 juvenile guidance centres in different parts of the State. In the city of Ahmedabad a pilot project with three sub-centres for the prevention of juvenile beggary and delinquency has also been started in the slum areas of Naroda, Rakhial and Asarwa (Ahmedabad City). In this project the children are provided with recreational facilities and vocation training and case-work services by the community organisers. Every year nearly 3,000 children are taking benefit of this project.

As a part of observance of the IYC, the department has taken up a scheme of establishment of children's centres for the all round development of children. After the establishment of the industrial estates at district level, industrialisation has spread even to rural areas. The district and taluk head-quarters towns are facing the problem of over-crowding, insufficient housing facilities, lack of sanitation, etc., leading to juvenile delinquency. Such small district level towns are also in need of children's centres for the proper and allround growth of children. With this in view the department has formulated a scheme of establishing 100 children's centres in the State. The scheme has been approved by the State Government on a pilot basis during 1979-80 with the sanction of 10 children's centres and a provision of Rs. 0.50 lakhs has been made.

With a view to provide near family atmosphere to the orphan children the State has implemented the Centrally sponsored scheme of foster care services on a pilot basis in the cities of Ahmedabad and Vadodara, through the Gujarat State Probation and After Care Association. It is intended to cover 100 orphan children under this scheme during 1979-80.

A scheme of granting scholarships to destitute children has also been taken up under the plan programmes. During 1978-79, 12 destitute children were benefited and scholarships to the tune of Rs. 16,500 have been granted to the destitute children for furtherance of their technical and higher studies.

#### THE CHILD MARRIAGE PREVENTION WORK

The Child Marriage Restraint Act, 1929 has been made applicable to the whole of the State with the appointment of the child marriage prevention officers at Ahmedabad and Vadodara cities.

Subsequently when the work under the Child Marriage Restraint Act got momentum 4 more child marriage prevention officers each at district head-quarters, viz., Junagadh, Bhavnagar, Rajkot and Surat, were appointed.

During 1978-79, 874 cases were received under the Act. Out of these, 164 child marriages were prevented and 45 cases were filed in the court. 380 cases were entrusted to the police for inquiry and for filing cases under this Act.

## SCHOLARSHIPS AND OTHER AID TO PHYSICALLY HANDICAPPED

The State Government awards scholarships to physically handicapped students up to standard VIII to those who have obtained at least 40 per cent marks at their last annual examination.

The details of scholarships sanctioned during the year 1978-79 are as under:

Blind 21; Deaf and Dumb 91; Orth. Handi. 825; Total 937. Total amount of scholarships granted: Rs. 2,74,600.

The Government of India scholarships to the physically handicapped children is forwarded from standard IX onwards through this directorate. The details of Government of India scholarships for the year 1978-79 are as under:

Blind 80; Deaf and Dumb 14; Ortho. Handi. 765; Total 859. Total amount of scholarships granted: Rs. 5,49,545.

The scheme of giving financial assistance to physically handicapped children of weaker sections of the society for purchase of artificial limbs, tricycles, hearing aids, etc. is in force in the State since 1970. Financial assistance upto Rs. 300 used to be given as per the income of the applicant. The rate of financial assistance has been enhanced from Rs. 300 to Rs. 600 with effect from April 1978. The details of prosthetic aids given during 1978-79 are as under:

Blind 9; Deaf and Dumb 3; Orth. Handi. 38; Total 50. Total amout of financial aids: Rs. 38,200.

Thus the directorate has taken up institutional and non-institutional programmes for the welfare of the children, with a network of institutions all over the State.

## Kerala

ERALA IS one among the very few States in India to take up social welfare and social security schemes from a very early date. Till 1975, these activities were being undertaken by a number of departments like prisons, revenue, etc. A separate department of social welfare was formed in this State during 1975-76 with a view to coordinating all the welfare schemes for women and children, the handicapped, the destitutes, etc. Realising the importance of child care as the initial step in building up human resources, the State Government is giving the highest priority to child development programmes.

The various child welfare schemes implemented by Government for the cause of children are outlined below.

It has been estimated that 40 per cent of the children in the age group of 0-6 years are suffering from the hazards of malnutrition in the form of protein, calory and vitamin deficiency. In order to combat this problem, a special nutrition programme (SNP) was started in 1971 as a Central scheme in the Fourth Plan. The programme now covers 225 thousand beneficiaries. These beneficiaries are given supplementary food through 1,125 feeding centres opened in selected areas. The annual expenditure on the programme comes to Rs. 1.25 crores. Action is in progress to cover 25,000 beneficiaries more during the IYC.

In addition to SNP which is implemented with indigenous food and native resources, the department of social welfare is making use of food assistance from the World Food Programme (WFP). The food assistance received from WFP is used for feeding pre-school children and pregnant and lactating mothers, 200 thousand beneficiaries are covered.

The integrated child development service scheme envisages the delivery of a package of services, essential for the physical growth, intellectual development, and emotional well being of the children. The service includes immunisation, health check-up, referral services, supplementary nutrition, informal education and health and nutrition education. The major beneficiaries of the scheme are the pre-school children and the pregnant and nursing mothers, though women in the age group 15-44 are also covered under the functional literacy programme.

At present, under the department of social welfare, there are four Centrally sponsored and 2 State sector ICDS projects. They are:

# ICDS Project: (i) Vengara (ii) Chavara (iii) Chavakkad (iv) Manantoddy Tribal Centrally sponsored.

(i) Trivandrum (Urban) State sector (ii) Calicut

Preparatory work in respect of three ICDS projects allotted to this State to be started in the IYC is in progress.

A proposal for starting two State sector projects is under the active consideration of government.

Day-care centres are started in selected backward areas, predominantly occupied by fishermen, coir workers, agricultural labourers, etc., where there are no voluntary organisations in the field.

At present there are 20 day-care centres where children are given supplementary food, periodical medical check-up and pre-school education. The cost of maintaining one day-care centre is approximately Rs. 15,000 per annum. Ten more day-care centres are proposed to be started during the IYC. It is also proposed to start 10 more centres every year.

Pre-school or nursery education, though very important, is now conducted by voluntary organisations. There are a few institutions maintained by major organisations for the benefit of well to do sections. But the majority of nursery schools, balwadis, etc., are run by mahila samajams, etc., under poor economic conditions. Therefore, financial assistance is given to them for the purchase of play materials, other equipments, etc.

During 1979-80, it is proposed to give a nominal assistance of Rs. 200 p.m. each to 100 institutions, which satisfy the minimum standards prescribed by the government.

The policy now followed in pre-school education is to assist and encourage voluntary organisations to start such institutions wherever possible. With this end in view financial assistance will be given to 40 voluntary organisations for starting creches in the unorganised sectors.

For the care, protection, maintenance and rehabilitation of destitute children, there are about 350 orphanages and other charitable homes in the State. These institutions are aided by the State Government. Per capita grant of Rs. 30 p.m. is being paid to about 30,000 orphan and destitute inmates of these institutions. The per capita grant is proposed to be enhanced to Rs. 35 during this year.

As per the Orphanages and Other Charitable Homes (Supervision and Control) Act 1960, a board of control of orphanages has been constituted. The main function of the board is to control and supervise generally all matters relating to the management of orphanages and charitable homes.

Under the auspices of the board a monthly magazine 'Kuttikal' is also published.

With a view to giving care and special training to mentally deficient children in the age-group of 5 to 14 years, the government runs two homes, one at Trivandrum and another at Calicut. There are facilities for accommodating 60 children in these institutions. A child guidance clinic is also function-

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ing in the home for the mentally deficient children, Trivandrum. Besides, there are seven homes for the retarded children under private management but aided by the government.

There are two homes for disabled children under the department, one at Quilon and the other at Trichur for providing care and protection to physically handicapped children of both sex up to the age of 14.

The children's home at Mavelikara is meant for the care, protection and rehabilitation of healthy children of lepers. Other children of either sex below the age of 6 are also admitted.

There are two institutions meant to provide shelter to destitute and strayed boys within the age group of 7-16.

Social defence measures cover care, protection and treatment of neglected, delinquent, uncontrollable and victimised children; probationers; control and eradication of beggary; programmes of moral and social hygiene and after care services. Probation is an universally accepted effective and scientific method of prevention of crime and delinquency. There are 28 probation officers working under three regional assistant directors and the joint director of social welfare is the chief probation superintendent.

Under the composite programme for women and children (CPWC) grants are given for running balwadis and for conducting immunisation, health check-up, etc., through a network of mahila mandals. Besides, the programme includes nutrition education through mahila mandals, strengthening of supervisory machinery for women's programme, demonstration of feeding programmes, training of women workers, etc.

Under the mid-day meal programme for school going children, about 1.7 million are given mid-day meals utilising the food articles from CARE.

Several surveys and studies have revealed that malnutrition is one of the major sectors responsible for the high mortality and morbidity. Nutritious foods are distributed to malnourished children through the ANM subcentres.

A new project under the department of paediatrics, medical college, Trivandrum, for providing nutrition, immunisation and health check-up to the children of the urban slums and coastal areas of Trivandrum, has been started. Necessary funds for the implementation of the project are being given by the State.

### ROLE OF VOLUNTARY ORGANISATIONS

Voluntary organisations in this State are doing remarkable service in areas like education, health, nutrition, recreation, etc. They organise child health centres, nursery schools, day-care centres, balwadis, feeding centres, etc.

The State social welfare advisory board is running two family and child welfare centres. Similarly, the State branch of the Indian Council of Child

Welfare undertakes programmes like holiday camps for children, immunisation, opening of day-care centres, creches, etc. There are three balasevika training institutes under the State Council of Child Welfare. The syllabi of the BST course covers subjects in school education, nutrition, health, social work, etc. The services of these training institutes are being utilised for training the anganwadi workers of the various ICDS projects both in the Central and the State sectors.

Of the various services rendered by various departments and voluntary organisations, the most important are the supplementary nutrition and the pre-school education. The government has provided an amount of Rs. 2 crores in the annual budget for 1979-80 for providing at least one meal a day to the remaining children who are not covered by any of the programmes mentioned above.

Pre-school education is included as one of the main components of the ICDS scheme. In the State the agencies involved in pre-school education are government departments and voluntary organisations like State branches of the All India associations like the Indian Council of Child Welfare, the BSS, the Central Social Welfare Advisory Board, etc. The question of rationalising the whole system of pre-school education was discussed in the last meeting of the State board for children and the State level coordination committees on social welfare. Accordingly it is proposed to constitute a board of control of nursery education and child care services by a legislation and this is under the active consideration of the government.

# Madhya Pradesh

Madhya Pradesh with its area of 443 thousand sq. km., geographically ranks first among the States in the country. Total child population (0-14) of 1.82 million constitutes 44 per cent of the total population of the State. Madhya Pradesh shares 7.9 per cent of the child population of the country. Of the total child population 40 per cent children are in the 0-4 age group. Boys outnumber girls as they share 51 per cent in the total. Only 15 per cent children live in towns and cities. Children's share in the working force is 7 per cent and 88 per cent of them are found engaged in agriculture. As estimated by Natrajan of the Registrar General's office, by 1991 child population in Madhya Pradesh will be 24.6 million, registering an increase of 35 per cent over the 1971 child population.

The annual birth rate (SRS estimates) per 1000 population in the rural sector at 41.7 is higher than that of the urban at 32.6 per 1000. The death rate

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is also higher in rural areas (19.8) as compared to the urban (11.1).

In Madhya Pradesh out of every 1,000 babies born alive, 159 in the rural and 113 in the urban sector die in the first year of life. Infant mortality rate is higher in children below 5 years of age. Expectancy of life at birth is estimated at 53.1 for males and 51.9 for females.

The basic needs of children are nutrition, health care, education, recreation and welfare services. Major problems faced by the children are lack of protection, malnutrition, deficiency, diseases and lack of health education. There is intensive illiteracy in rural areas. Out of 100 females in villages 84 are illiterate. The enrolment ratio in the 6-11 age group stands at 62 per cent; in case of 11-14 at 26 per cent; and 17 per cent in the 14-17 age group. It clearly indicates that most of the children of school going age do not attend schools. They are used as cheap manpower for agriculture and allied activities. Among the non-enrolled children the largest group is that of girls. Madhya Pradesh is one of the States where the problem of dropouts is most alarming. Nearly 66 per cent of children drop out between class I-V.

Recreation facilities are not adequate in the State. Similarly care facilities like creches, day-care centres and child guidance clinics are very few. There is paucity of welfare services for destitutes, handicapped and socially delinquent children and also for normal children of weaker section of the society.

#### CHILDREN SERVICES—A REVIEW

Nutrition and Health: Special nutrition programme is being implemented by the social welfare department in 19 towns of the State, of which 12 towns are covered under the programme assisted by the World Food Programme (WFP). About 200 thousand children are benefited. Nutritional food is distributed to children of 0-6 age group and expectant and lactating mothers. In tribal areas this programme is conducted by the tribal welfare department through 11,412 centres. About 700 thousand children and mothers are benefited.

In rural areas applied nutrition programme (ANP) is being implemented. At present out of 458 development blocks 155 are covered. ANP is supervised by the development department in the State.

Through ICDS projects integrated services are provided to children. There will be 3 rural, 1 urban and 4 tribal projects during this financial year. At present only two are working.

There are 462 primary health centres, 537 dispensaries, 670 hospitals, 199 maternity homes 555 family welfare planning centres and 3,049 subcentres. The number of ayurvedic/homoeopathic and unani hospitals is 1107. The State health department has been implementing an ambitious programme, 'expanded programme of immunisation' since October 1972. It is to cover the maximum number of villages by adding 10 per cent villages

every year. By 1990 it is expected that every child born will be protected from all preventible and communicable diseases within first year of life. School immunisation programme is taken up to cover all children in 6-8 age group. Services of paediatrics and dental surgeons are being extended upto district level. Anti-natal and post-natal clinics are also run in every health institution throughout the State. Efforts are being made to educate rural masses to avail the services of trained dais for maternal care. Distribution of vitamin A tablets and D drops is arranged in every health centre.

Education: A network of educational facilities has been provided by way of opening a large number of primary and middle schools. At present there are 50,296 primary and 8,681 middle schools of the education department and 9,156 primary and 1,511 middle schools of the tribal welfare department. The State is going to provide schools within easy walkable distance of the beneficiaries. Special type of schools will be started for tribal children. Efforts are being taken to eliminate stagnation also.

Welfare Services: State social welfare department is assisting about 300 voluntary organisations through grant-in-aid for balwadies in rural and urban areas for the children in 3-6 age group. Institutions established by the department itself include 8 balwadies, 1 orphanage, 2 cottages for foster care to orphan children, 9 schools for physically handicapped children and services desired under the Children Act in 31 out of 45 districts. In addition, there are 7 homes for healthy children of leprosy patients. Financial assistance for artificial limbs and scholarships to nearly 500 students are also provided. For orthopaedically handicapped children, the department has established two homes which provide treatment and other facilities.

#### PROBLEMS OF IMPLEMENTATION

In Madhya Pradesh child welfare services are administered through several departments of the State Government including public health, education, tribal and harijan welfare, social welfare and development department. At the State level all these have their State directorates and agencies at the division, district, block and village level.

From the review of existing child welfare services and actual needs of the children given earlier, it is clear that the present availability is not adequate. Much is to be done. IYC has provided a good opportunity to various departments to make their own assessment.

The basic problem is finance. It results in curtailment of the various programmes intended for the development of children. Demand is more but supply is limited. For example, the special nutrition programme is implemented for the children of slum and poor localities in 19 towns only. To increase the coverage in terms of beneficiaries as well as towns more funds are required. Similarly, facilities of destitutes as well as physically handicapped children are desired to be extended to the maximum. Existing institutions need to be

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upgraded and the number of scholarships increased, but lack of funds does not allow it. Voluntary agencies are not much active. They too depend on government grants.

It is also a point that people do not avail of facilities existing for their children. For example, in a village even where school exists, cultivators do not as a rule send their wards to schools. This is a common problem in rural and tribal tracks of the State. Also, the spirit of selflessness and dedication for social service is losing its place in society in general, especially in workers in voluntary organisations and government institutions.

## Maharashtra

THE YEAR 1979 is being observed as the International Year of the Child (IYC). The State Government has set up a State level IYC committee under the chairmanship of the Minister for Social Welfare for formulating and implementing various programmes for children. Accordingly the committee has decided to take up certain programmes, e.g., (a) providing a package of services to needy children in a few selected villages, having a population of less than 500, in every district; (b) providing education, nutrition, medical care, etc., to the urban children working in unorganised sectors like bidi making industry, hotels and restaurants, construction industry, etc; and (c) sponsorship programme for destitute children under the above items to cover 2,000 children from six major cities in the State, viz., Bombay, Pune, Nagpur, Aurangabad, Kolhapur and Sholapur.

Similarly regional IYC committees under the chairmanship of the commissioners have also been set up.

A provision of Rs. 8.10 lakhs has been made for implementation of the above schemes for needy children during 1979-80.

The Maharashtra State social welfare advisory board is running 36 family and child welfare centres and 7 welfare extension projects in the rural areas of the State. These projects were taken charge of by the State Government in 1974-75 and 1975-76. The government pays 100 per cent grant-in-aid to the State board on account of these projects and they are managed by the State board under the overall control and supervision by the director of social welfare. The total coverage of beneficiaries under the 36 projects is 6,840 children and 3,240 women. The coverage under the 7 welfare extension projects is 1,260 children and 630 women. The government pays grant-in-aid to the extent of Rs. 30 to Rs. 33 lakhs per annum to the State board.

The problems of the physically handicapped covering the blind, the deafmute, the crippled, the mentally retarded, the aged and the infirm, etc., are receiving much closer attention at the hands of the State Government. The broad nature of these programmes covers activities such as special schools for handicapped children, sheltered workshops, award of scholarships, supply of artificial limbs, financial aid for self-employment, training programme of teachers for special schools, etc.

The government is running 13 such schools/institutions in the State for the physically handicapped, out of which 4 are for the blind, 3 for the deafmute and 3 for the orthopaedically handicapped. In addition, the government has started 3 multipurpose group complexes for the physically handicapped children at Ambejogai (dist. Beed), Sholapur and Wardha and the fourth multipurpose complex has been sanctioned (1978-79) at Jalgaon. These 4 complexes provide education, shelter, food, medical care, etc., for 400 physically handicapped children of different categories under one roof. The expenditure being incurred on these complexes comes to Rs. 6 to Rs. 8 lakhs per annum.

The major part of education and training programme for the physically handicapped is being handled by voluntary organisations for which the government provides necessary grant-in-aid at specified rates.

Voluntary institutions are running 51 special schools for the blind, the deaf-mute, the orthopaedically handicapped and the mentally retarded. During 1978-79 the rates of capitation grant in respect of the students residing in the hostels attached to the schools for the physically handicapped have been increased from Rs. 45 to Rs. 60 per inmate per month. Voluntary institutions are also maintaining 15 workshops for various types of physically handicapped persons. The total number of children in these schools is 3,320 and the number of trainees in the workshops is 600.

The proposed expenditure likely to be incurred in 1979-80 on the programmes for the physically handicapped run by the State Government and voluntary institutions is Rs. 79 lakhs (non-plan) and Rs. 22 lakhs (plan).

#### SOCIAL WELFARE

The children who need care and protection comprise of orphans, the destitute, neglected and victimised children, with behavioural disorders, and youthful offenders. In Maharashtra, these children are covered under the Bombay Children Act, 1948. The institutions under the Act, viz., observation homes (remand homes), classifying centres, approved centres (certified schools) and approved institutions (fit person institutions) provide the necessary services for the care, protection, treatment, training and rehabilitation of such children. The Bombay Children Act, 1948 has been amended in 1975 and the amended Act has enhanced the admission age limit in respect of girls from 16 to 18 years and the detention age limit from 18 to 20 years. It has thus enabled a coverage of a larger number of girls for their protection and welfare during their sensitive period of adolescence.

#### BACKWARD CLASS WELFARE

The programme is intended for the scheduled castes, scheduled tribes, denotified tribes and nomadic tribes. The programme regarding educational concessions to such classes include: (a) exemption from payment of tuition and examination fees and award of scholarships; (b) opening of government hostels for boys and girls; and (c) payment of grant-in-aid to voluntary agencies for running hostels for students belonging to backward classes.

#### TRIBAL WELFARE

This is an important programme implemented by the directorate of tribal welfare. Under this programme, ashram schools with attached hostels and balwadis are being opened on the basis of one school for a population of about 6,000 to 7,000. This special programme, named 'area development approach-opening of ashram shala complexes' envisages selection of a compact area covering an average population ranging between 6,000 to 7,000 within an area of 8 to 10 km. to cater to the educational need of the tribal children in the interior and tribal areas. A provision of Rs. 4.77 crores has been made in the current year's budget on this scheme. About 22,000 tribal boys and girls are taking education in these schools.

Six government hostels for scheduled tribe girls are being run by the directorate. The budget provision proposed for these hostels for 1979-80 is Rs. 4.34 lakhs.

There are 148 ashram schools for scheduled tribes run by voluntary agencies. These are aided schools and are paid grant-in-aid at 90 per cent of the expenditure on approved items of expenditure. A provision of Rs. 1.60 crores has been made in the budget 1979-80 for payment of grant-in-aid to the above schools. About 20,000 to 21,000 children are taking education in these aided ashram schools.

#### MID-DAY MEALS

The school feeding programme for primary school children in the age group of 6-11 was introduced in the State in 1968-69. The object of the programme is to combat malnutrition in school children and to ensure maximum attendance in the schools in the rural areas. In this programme, nutritious dishes are also given to remove the nutritional deficiencies. This is a fully State-sponsored programme and the entire expenditure is borne by the State Government.

During the Fourth Plan 225,000 beneficiaries were covered in four districts with CARE food assistance (Thane, Pune, Nagpur and Aurangabad). The CARE discontinued its food assistance and the committed level of beneciaries was continued with local indigenous food material upto 1974-75.

This programme was expanded under the minimum needs programme in the Fifth Plan and the yearly coverage with indigenous food material under the Plan is: 1974-75, 55,000; 1975-76, 27,500; 1976-77, 11,000; 1977-78, 12.800; and 1978-79, 12.800. Over and above this coverage, under the '40 point programme' of the present State Government the programme has been extended to all tribal and DPAP affected areas of 13 districts for a coverage of 539,926 beneficiaries during 1978-79. All the 785,926 beneficiaries under plan and non-plan were covered with 'paushtic ahar' manufactured by the Maharashtra Small Scale Industries Development Corporation (MSSIDC), Bombay. The MSSIDC was the sole agency for supply of nutritious food during 1978-79. Units of the educated unemployed were created by MSSIDC at each district and they were supplying the 'paushtic ahar' to the respective districts. Each beneficiary is given a ration of 100 gm. 'paushtic ahar' and the cost is 30 paise per ration of 100 gm. per day. The nutritive value in 100 gm. ration is 350 to 400 calories, 12 gm. of proteins and vitamins. The feeding is for 20 days in a month, 200 days in a year. The life of 'paushtic ahar' is 15 to 30 days, if properly stored.

This is a district level scheme for which the concerned district planning and development councils are providing funds.

During 1979-80, the CARE is donating food material for this programme. It is proposed to cover 200,000 beneficiaries with CARE material and a ready made food called 'sukhada' will be given under this plan in non-tribal areas. In addition, 41,550 beneficiaries will be covered in tribal areas with indigenous food (plan programme) along with 785,926 beneficiaries (non-plan).

It is also proposed to cover a total of about 3 million beneficiaries by the end of the Sixth Plan. This will be against the total primary school children of 5.5 million in Maharashtra.

#### EDUCATION OF CHILDREN

In Maharashtra, education is compulsory for children of the age 6 to 14. Since independence, the State Government has made concerted efforts to achieve 100 per cent enrolment and retention of the children of school going age. For the purpose, about 48,000 primary schools have been opened and attempts have been made to make schooling facilities available within a walking distance. In spite of these efforts, there is no full response and there is a large number of children, either not enrolled or have been enrolled but have not continued in the schools. This state of affairs has been taken into account while formulating the Sixth Plan and it is aimed at achieving the goal of 100 per cent enrolment and retention during the Plan period.

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# Meghalaya

SINCE ITS inception, the department of social welfare has taken up many schemes especially the child welfare schemes. Prior to 1974-75, the department was attached to the education department. During that period, grants-in-aid were given to voluntary organisations for social welfare activities, grants-in-aid to the physically handicapped and scholarships for the blinds and the physically handicapped. The department was detached from the education department in 1974 as the volume of work and public demand were increasing year after year. During that period onward, the department has started implementing many other schemes especially the child welfare schemes. Such schemes are:

The special nutrition programme (SNP) in urban areas provides a package of services such as supplementary nutrition, immunisation, health check-up, distribution of multi-vitamins and other necessary medicines to children below 6 years besides nursing and expectant mothers. The programme is executed by the department in all the district headquarters of the State. Up-to date there are 59 SNP centres with 11,800 beneficiaries (*i.e.*, children below six years of age are 8,850 and nursing and expectant mothers are 2,950) approximately.

A similar scheme, viz., the integrated child development services scheme is sponsored by the Government of India. The scheme provides integrated services to children below 6 years. Since the mother has a key role in the physical, psychological and social development of the child, nursing and expectant mothers have been brought under the scheme. The delivery of services to the child, nursing and expectant mothers is health check-up, immunisation, supplementary nutrition, referral services, health and nutrition education and non formal pre-school education in an integrated manner. The scheme is being implemented in the rural areas only of Songsak block in the East Garo Hills District and Mylliem block in the East Khasi Hills District. Another project at the Thadlaskein block in the Jaintia Hills District is going to be implemented in 1979-80. The work is now under progress.

Anganwadi centres in the existing two projects are 50 in each project. In Songsak block, in addition to the 50 centres there are 53 sub-feeding centres. In Mylliem block also in addition to the 50 centres, another 50 anganwadi centres are going to be implemented as soon as the training of anganwadi workers is completed.

The total number of beneficiaries in the above two projects since the date of inception are 20,000. The number of beneficiaries in the third project in Thadlaskein block is not yet identified. The identification will be done when all the health staff and other staff are in position. The number of anganwadi centres are 50 according to the pattern.

In connection with the celebration of the IYC and the national policy

for children, some programmes have been taken up and some are proposed to be taken up. The following are the programmes:

- (i) Many of the pre-primary schools run by the voluntary organisations are poor and ill-equipped. As such, it is proposed to continue the distribution of teaching aids to these schools. So far 58 pre-primary schools have received teaching aids from the department during 1976-78.
- (ii) One balbhavan in Shillong has been set up in 1979 through the voluntary women organisations. Grant-in-aid to start the balbhavan was given and it will be reviewed every year.
- (iii) Three creches/day-care centres to be entrusted to voluntary women organisations are going to be set up very shortly during 1979-80.
- (iv) A remand home as a short stay home for the undertrial juvenile delinquents is also proposed to be established as soon as possible. At the moment the department is facing accommodation problem since such home requires a good building, other staff quarters and a sizeable campus with good fencing.
- (v) One correctional home for the undertrial juvenile delinquents was sanctioned during 1976. But due to accommodation problem and other problems like water supply, etc., the scheme is kept in abeyance until proper accommodation is arranged.

Scholarships for the physically handicapped are continued every year. So far 109 children have received scholarships under the scheme for the last three years.

There are some orphanages in the State out of which 6 are receiving grantin-aid from the Government of India through the social welfare department since the last three years. It is proposed that more of these orphanages be covered under the scheme and fund for the purpose has also been provided in 1979-80. The additional number of these children's homes depends on the extent of funds available and on the grant-in-aid to be released by the Government of India. However, effort is being made to cover all destitute children under the scheme.

# Nagaland

THE POPULATION of Nagaland according to the 1971 census is 516,449. Children in the 0-14 age-group constitute about 37.88 per cent of the total population in the State. About 135,038 children in the 6-14 years age-group are enrolled in educational institutions.

Nutrition: In Nagaland even though malnutrition among children is not a major problem, there are many children in the rural areas found to be suffering from mild degrees of malnutrition. This is mainly due to lack of adequate sanitation and balanced diet. In order to combat this problem, the special nutrition programme (SNP) was launched in 1970-71. At present there are 408 feeding centres in operation which include 100 feeding centres under the 2 ICDS projects in the State. Upto now the SNP has covered about 52 thousand beneficiaries.

In view of the needs of rural children, it is proposed to expand the SNP during the Sixth Plan period, and accordingly Rs. 1.25 crores has been allocated for the opening of 406 new feeding centres which will cover about 44 thousand beneficiaries. During 1979-80 Rs. 17 lakhs is proposed to be spent under the programme for opening 142 new feeding centres covering about 17 thousand beneficiaries.

Recreation: Recreational facilities for children in rural areas of Nagaland are poor. In order to let them meaningfully utilise their energies and leisure, provision of adequate recreational facilities is essential. Upto to now the State social welfare department has set up 13 recreation centres for rural children. In these centres recreational facilities, such as sliding-chute, swing, see-saw, badminton, carrom, children's books, etc., are provided by the department. A social worker is appointed by the department in each centre for organising recreational activities. At present the total coverage of beneficiaries is about 1,300. In order to give more coverage under this programme, it is proposed to set up 20 new recreation centres during the Sixth Plan period.

Care and Welfare: There are many destitute children in Nagaland but there are not sufficient voluntary organisations to render welfare services to them. During 1978-79 the department sanctioned grant-in-aid to 8 voluntary organisations dealing with the welfare of children and the physically handicapped. In 1979-80, a sum of Rs. 0.40 lakhs is proposed to be spent for giving grant-in-aid to some new voluntary organisations working for the welfare of children.

*I.C.D.S.*: The first ICDS project in the State was set up during 1975-76 in the Zeliang-Kuki block under which there are 55 anganwadi centres covering about 4 thousand beneficiaries. The second ICDS project was set up in the Mon block during 1978-79. There are 45 anganwadi centres under this project covering about 6 thousand beneficiaries.

The ICDS provides a package of services to children below six years of age, pregnant women and nursing mothers. It includes supplementary nutrition, immunisation, health check-up, referral services, nutrition and health education and non-formal pre-school education. In addition, functional literacy programme for adult women is implemented which aims at imparting non-formal education to adult women in health, hygiene, nutrition, child care, etc.

A child development project officer is in charge of each ICDS project.

An anganwadi worker is in charge of each anganwadi centre and she is assisted in her work by a helper. The work of the anganwadi worker is supervised by 3 mukhyasevikas in each ICDS project. Under the medical component of the scheme, one medical officer, 2 lady health visitors and 4 auxiliary nurse midwives are attached to the primary health centre to strengthen the health infrastructure. For the implementation of the ICDS schemes, a State level coordination committee and district and sub-divisional level coordination committees have been constituted. During the Sixth Plan period it is proposed to set up more ICDS projects in the State, so that by the end of the Plan period there will be one ICDS project in each district. Accordingly, three new Centrally sponsored ICDS projects are proposed to be set up out of which one project is proposed to be set up during 1979-80 in the Shamatorr-Noklal block. In addition, two new ICDS projects are proposed to be set up from the State funds during the Sixth Plan period

Award of Scholarship to Physically Handicapped Students: This is a new scheme under which the department of social welfare awards scholarship to deserving physically handicapped students reading in class I to class VIII. During 1978-79 Rs. 0.14 lakhs was spent for this scholarship to 42 physically handicapped students. In 1979-80 it is proposed to cover more students under the scheme

Blind School: To cater to the needs of blind children, a blind school was set up by the department at Pherima in 1977-78. Since it is still at the initial stage there are only 8 students in the school at present. A braille teacher is in charge of the school with a craft instructor and other staff assisting him, The blind students are provided with free hostel facilities, food and clothing. It is proposed to give them education up to the primary level in the braille system. In addition, training in vocational trades such as bamboo and canework and carpentry is given to the inmates.

Welfare Extension Project (original pattern): The social welfare advisory board was set up in 1958 with the object of assisting voluntary organisations for rendering social welfare services. The State board has set up welfare extension projects (original pattern) in Mokokchung, Kohima and Phek districts. All the three projects have five centres each and are functioning under their respective project implementing committees headed by the local administrative officers. The projects aim at providing adequate services to children through the period of growth to ensure their full physical, mental and social development. The main activities of these projects are conducting balwadis through the gram-sevikas and providing maternity and child welfare services through the dais. In the balwadis, children of 3-6 years age group are imparted pre-school training through informal education. They are also provided with supplementary nutrition, medical check-up and immunisation to bring about an allround development of the child.

## W.E.P. (BORDER AREA)

In addition, the State board set up a border area project in the Mon District in 1977-78. The services rendered by the five centres of the project are the same as that of the welfare extension projects (original pattern). The administrative set-up is also identical in both the projects. The State board has proposed to set up four more border area projects during the Sixth Plan which include one project to be set up during 1979-80. In addition to the balwadis run by the State board, there are five more balwadis functioning in various parts of the State for which the voluntary organisations concerned receive financial assistance from the State board. The State board proposes to open more balwadis during the IYC.

Holiday Camp Programme: Under this scheme, the board gives financial assistance to voluntary organisations for conducting camps during holidays for 50 children of 15 days duration. During 1978-79 four such camps were conducted benefiting about 200 children.

Creche Programme: The State board proposes to implement the creche programme from 1979-80. Under this programme, children below 6 years of age belonging to working and ailing mothers of poor income group will be taken care of by ayahs in the creche units. The State board would also provide financial assistance to voluntary organisations for running creche units.

Vocational Training Centre for Physically Handicapped: The Nagaland Gandhi Ashram, Chuchuyimlang, has set up a vocational training centre for physically handicapped children (other than blind) in 1977-78, with financial assistance from the State social welfare department. A plot of land has been acquired for this purpose and construction of building has started recently. At present there are only about six trainees in the centre and they are imparted training in various vocational trades, such as carpentry, canework, tailoring, etc., by instructors and other staff of the centre.

## Tamil Nadu

A CCORDING TO the 1971 census the population of children in the State between 0-14 years is 15,562,040 which constitutes 37.76 per cent of the total State population. The infant mortality rate which is considered to be the index of the general state of public health of the community is very high in Tamilnadu—120 per 1000 live births according to the sample registration survey. One eighth of the deaths among infants are due to pre-maturity-birth which is directly related to maternal malnutrition. Nutritionally, the incidence of vitamin 'A' deficiency is estimated to be 20.5 per cent among pre-school children, the incidence of 'B' deficiency 11.7 per cent and the incidence of iron deficiency anemia 52 per cent. The number of children who suffer from

physical handicap is estimated to be 74,000 excluding the number of mentally retarded children. Child labour prevails in almost all trades and it is estimated that there are over 700 thousand children in various occupations.

In Tamilnadu besides the education department, which looks after the educational needs of children, the social welfare department and the department of correctional administration work for the welfare of children. The departments have specific programmes for normal children, the physically handicapped children of working mothers, destitutes, and orphans and delinquents.

The major programme under child welfare in the social welfare department is the establishment of balwadis in the rural areas and urban slums. The programme was launched in 1962 and now the State has 4,100 balwadis spread throughout Tamilnadu. These balwadis in addition to providing preschool education, now serve as an omnibus medium for routing all the early childhood services in an integrated manner. This programme is extended every year, and from this year, 9,000 more balwadis will be started within the next five years. The State is implementing three ICDS projects sponsored by the Government of India (in Madras and Tahlli in the Dharmapuri and Nilakottai in the Madurai districts) and continue the Government of India sponsored schemes of integrated child welfare demonstration projects and the family and child welfare projects. Besides, under the Madras urban development programme a maternal and child welfare project with 100 balwadis is functioning in Madras slums with assistance from the World Bank. Tamilnadu has initiated and expanded the programme designed to reach pre-school children, pregnant and lactating mother providing supplementary food. The total number of beneficiaries is 600 thousand through balwadi programme and special nutrition programme. The SNP is in operation in Madras, Madurai and 33 municipalities 4 panchayat unions and 21 tribal areas. The State was the first to establish the primary school lunch programme. Through the applied nutrition programme, besides supplementary food, nutrition education to mother, school children and pre-school children is also aimed at.

Special attention is given to the physically handicapped children. They are given free hearing aids, artificial limbs and other prosthetic aids. During the IYC the State has announced a scheme for supply of such prosthetic aids to all physically handicapped children. Free bus passes will be given to all the physically handicapped children. Scholarships will be given to the physically handicapped children studying from 1st standard to 8th standard.

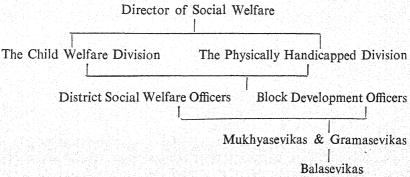
A sum of Rs. 2.5 crores is allotted in the budget towards child welfare. This constitutes about 75 per cent of the departmental budget.

A massive integrated nutrition project is contemplated to be started from the IYC with World Bank assistance. This project will cover 170 blocks in 6 districts of Chingleput, North Arcot, Madurai, Ramnad, Pudukottai and Tirunelveli. Each village will have a nutrition centre, through which supplementary nutrition to children and mothers will be given. To have a long lasting improvement in the nutritional status of the children, a massive

nutrition communication will be organised through mass media.

The objective of the department of correctional administration is to provide care, treatment (correctional), training, both educational and vocational, and rehabilitation of institutionalised juvenile delinquents, youthful offenders, destitutes, and uncontrollable children, under the provision of Tamil Nadu Children's Act of 1920 as amended in 1958. The department runs 6 reception homes and 8 approved schools and assist 7 private reception homes and 50 private schools. These schools have a strength of 5,000 children who are given regular education and vocational training on various skills which include book binding, carpentry, weaving, tailoring, metal work, blacksmithy, matweaving, masonary, gardening and agriculture, band music, dancing, dairy farming, etc. The rehabilitation measures include restoration to parents, job placements, marriages and absorption of students as teachers in the institutions, etc. For children who are desirous of establishing their own trade, a lump sum grant is given by government. The budget of the department is Rs. 1.15 crores.

Voluntary agencies play a prominent role in the welfare of children and the State Government encourages the voluntary efforts. Grants have been instituted for various activities. Under the destitute children grant Rs. 21 lakhs was given as grant in 1978-79. The provision has been increased to Rs. 28 lakhs during 1979-80. Approximately 4,000 children are benefited under the scheme. The social welfare board in Tamil Nadu is assisting voluntary agencies. About 100 orphanages are receiving grants every year for the improvement of their existing services to children by way of better food, clothing, books, equipment, furniture, etc. About 300 voluntary agencies receive grant to run pre-school education centres in rural areas and urban slums and 60 institutions for running creches for children of working mothers. Some of the other areas of grant assistance are, children's clinics which give medical aid to children in uncovered areas. The social welfare board gives full grant to institutions for taking children on holiday camps. About 2,000 children are taken on this educational and recreational trip annually for 15 days. The organisational set up for delivery of children services in the State is as below:



The child welfare programmes are implemented by the directorate of social welfare through the block development officers. At the block level the *mukhyasevikas* and *gramasevikas* assist the block development officer in the supervision and implementation of the programme. The district social welfare officers extend technical control over the programme.

By and large the programmes run by government fulfil the objectives of the programme. However, in view of urgency of the needs of children the existing schemes must be expanded considerably and larger funds allotted.

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## Tripura

THE TRIPURA State Government has planned a number of different programmes to celebrate the IYC. Although the government will coordinate and provide funds for these programmes, it is also encouraging a strong grassroots approach to their planning and implementing. They are trying to encourage people in the villages and at the block level, through the medium of the gram panchayats, to make their own programmes and to implement these, as far as possible, themselves. About Rs. 3,000 has been made available to each block for this purpose.

The State Government wants to involve as many children as possible in these programmes. They do not want to have something 'just for Agartala, something posh', which leaves out the many children in the rural areas.

A twelve-point programme was drawn up to commemorate this special year for children. There is support for this programme at all levels because many of its features stem from suggestions made at the grassroots level by the gram panchayats. The State Government has been trying to develop some consciousness among the gram panchayats of responsibility for children.

Perhaps the most important (and certainly at Rs. 14 lakhs the most expensive) of the programmes for the IYC is the opening of 600 new balwadi centres for children between 3-6. Another important and badly needed item is the setting up of destitute children's homes in three districts. Two of these have already been opened in Agartala and Shantibazar. A third will be opened in Dharmanagar.

In addition to opening and financing these homes, the State Government has donated land and buildings in Agartala worth over Rs. 3 lakhs to Mother Teresa to start a children's home.

Two important health programmes will also be implemented this year. Children's wards will be opened in two district hospitals, those at Udaipur and Kailashar. Immunisation of all balwadi children in Tripura will be carried

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out by the health directorate. This will include vaccinations for smallpox, cholera, triple antigen and polio.

Another important item is a nutrition programme for all the balwadis opened this year. This will be implemented by the gram panchayats. All the children coming to the balwadi will be given a meal of rice and dal during the morning programme.

#### PROBLEMS IN ADMINISTRATION

The most serious problems are in implementing the nutrition programme and the new balwadi programme. It takes a great deal of effort to get food to the balwadi centres and some of the officers and welfare supervisors have shown a disinclination to do the work required. Special officers may be needed to implement this programme in the long run as it is a heavy responsibility.

The opening of 600 new balwadis in a single year has presented many of its own problems. Difficulties have been encountered in recruiting suitable staff for the balwadis, giving them training, obtaining and constructing balwadi buildings, finding accommodation in the villages for the workers, equipping the balwadis and getting food and other supplies to the workers in the more remote areas. The distances some of the girls have to go on foot in order to reach the villages in the more backward areas have also caused problems.

The panchayats have an important role to play in the balwadi programme. Previously the centres where they would be established were selected by the social education department on the basis of requests made by the villagers themselves that a balwadi be established in their area. Some balance in the number per block was made. Now the panchayats are selecting the locations for the balwadis. Each panchayat is given a certain quota and they select the villages where these are to be placed.

#### Recruitment

Originally it was thought that the balwadi worker would be selected locally, that a girl could be recruited from each village where the panchayat had decided to place a balwadi. It was not possible, however, to get a qualified girl from each village. Some of the villages are so backward, especially in the tribal areas, that it was not even possible to get a girl who had read up to class three.

The strategy finally adopted by the Education Minister for recruitment was to invite applications from girls who were matriculates, then a girl from the closest village to the balwadi was selected for appointment. That way, the girl could still be fairly close to her own home and family.

Where it was not possible to get matriculates, non-matriculates were hired. Balwadi workers who are matriculates are paid Rs. 175 per month in the

beginning. Girls who are non-matriculates are paid Rs. 125 per month.

A major criterion for selection was to give emphasis to girls who came from poor families. In addition, the State Government has not selected anyone with a close relative already in government service. Generally they have tried to place Bengali girls in Bengali areas and tribal girls in tribal areas matching the language of the balwadi worker with that of the village.

Selection of the school mother or *gram lakshmi*, who assists the balwadi worker, is done by the panchayats. She is selected from the village in which the balwadi is placed. It is her job to assist the balwadi worker. Sometimes she helps bring the children to school, sees that they are clean, helps to keep the balwadi clean, and also looks after the food. She is paid Rs. 120 per month.

#### Training

The Tripura social education department has a well-established balwadi programme. Starting in the early sixties with a few small balwadis, the programme was gradually expanded through the years until it grew to over 600 balwadis by 1978. About 200 of these balwadis are in blocks covered by the ICDS, which has received strong support both from the Government of India and the UNICEF. The female balwadi workers, or gramsevikas, trained under the old social education scheme, received at least three months' training prior to their appointment to a balwadi. The anganwadi workers in the ICDS scheme received a minimum of four months' careful training which also included coverage of the use of selected items of montessori apparatus. About half of the social education balwadi workers also received training in the use of this apparatus. It has not been possible to give this type of training to the new balwadi workers. There are no funds to give them long training and no institution large enough to accommodate them in any case. They are, instead. being given orientation through a series of group meetings in 5-6 balwadis with the balwadi workers and school mothers.

The balwadi workers for the ICDS blocks are still being given four months' training at a centre in Kakaraban. Fifty girls are receiving training here. Concurrently, the Tripura council for child welfare is giving an 11-month course at the *gramsevika* training centre in Arundhinagar, Agartala. Normally fifty girls are trained in this course.

It remains to be seen, however, whether this type of limited orientation training will adequately prepare the new workers for the important tasks they are required to do. There has been much criticism of the new balwadi programme for this reason. The key to the old programme was that of inspiring balwadi workers with a sense of dedication both to the children and to the community in which they were working. They were multipurpose workers whose responsibilities not only included the children but also, ultimately, the parents and others in the whole community.

The balwadi worker had to know something about health, nutrition, and child care as well as pre-school education, and had to communicate these to

the adults in the community. Responsibilities of this type are difficult to fill without proper and careful training.

## Buildings

One requirement of the balwadi programme is that the villagers themselves must supply the land and building. If the villagers build mud walls of  $34 \times 20$  feet for the balwadi, they will be given 10 bundles of GCI sheeting worth about Rs. 10,000 by the government as well as funds for the doors and windows. They have to share some of the expenses, however, and are usually expected to put in about Rs. 1,500 worth of the cost of the building themselves. There is now a feeling on the part of some members of the government that this may be too much of a burden on some of the poorer villages and that the government should be responsible for all the expenses. These could be administered by the panchayats.

## Equipment

There are one or two good balwadis in each block, with toys, books, montessori apparatus, and good furniture, including racks, tables and almirahs. For most of the new ones, however, there is very little in the way of funds available for equipment. A list of the minimum in teaching materials required for the balwadis and adult literacy programme has been prepared. It includes slates, chalk, alphabet charts and blackboards. There is not always the sense of responsibility on the part of those making them to do the work well when they are given a large government order. The department would also like to provide more in the way of educational apparatus for the balwadis but this has been difficult to obtain. Furniture too is a problem as it is rather expensive.

## Distances of Some Balwadis from Sub-Divisional Headquarters

This is an extremely serious problem for some balwadi workers. Some have to walk 15-20 miles to get to their homes from the village where they are posted. They may have to walk the same distance to get to their sub-divisional headquarters. Dumbarnagar sub-division, in particular, is a very backward and difficult area. There is no road through most of this sub-division. At present, all balwadi workers have to go to the sub-divisional headquarters to collect their salaries. For some this creates immense problems when they have to go on foot.

## Problem of Supplies

This is related to the backwardness of many of the villages which are some distance from roads, public transportation and well-stocked bazaars. If the balwadi worker has any requisition for supplies, this is placed with the male social education workers in the area who try to procure the things they need like kerosene, cooking oil, safety pins. and so on. They may not even be able

to get such simple things as a kilo of sugar in their own villages. Most of their food has to be procured for them by the male SEWs.

It is not customary for young Bengali girls to go to the bazaar, so someone else has to procure their food for them. This can create great problems. At first the tribal girls who were balwadi workers used to go to the bazaar on their own, but the villagers didn't like this; so now even they have stopped going. Finding some means of providing food for so many balwadi workers—several hundred at the very least—is a tremendous operational problem.

Although the new programmes discussed above have been initiated to celebrate the IYC, there is a very strong feeling at all levels that they should be continued in future years. They should not be something that only happens in this special year because measures for the welfare of children will always be needed in the State.

# **Book Reviews**

World Atlas of the Child

Prepared by the World Bank in recognition of the International Year of the Child, 1979, pp. 40.

The birth of a child is a source of joy to the parents, a male child more so. Once the initial euphoria wanes, however, concern sets in regarding its future. Ever since the Rev. Malthus published his famous essay on the 'Principle of Population' societies have been concerned with population, the causes and consequences of its growth. Though history has proved that Malthus has oversimplified the laws of population and economic growth and their inter-relationship, there is no denying the fact that rapid multiplication of population does put an excessive strain on the economy. For, the faster the growth of population the larger the investments needed to keep up a given level of production per caput.

Planning for a better future has thus to take cognisance of the likely growth in numbers and their demands on the nation's resources. Multiplication of numbers is only one aspect of the issue; the other, and equally important, aspect is the composition of the populace. A larger proportion of children below 15 years of age in the population would imply an economic handicap of heavy childhood dependency and a relatively low proportion of population of labour force age.

The World Atlas of the Child published by the World Bank to commemorate the International Year of the Child provides us with a global picture of population and its composition. The stress is on children and child related information—birth, death, and survival rates, enrolment ratios and child participation in labour force. The information is provided for three bench mark years—1960, 1970 and 1975—and based on the 1975 data the Atlas presents nine thematic choropleth maps (with a graphical presentation of classes of grouped country data by different tones) of these child related indicators. An interesting part of the Atlas is the crystal grazing, into the year 2000, and the mass of data published in the statistical annexes.

The statistics brings out loud and clear the magnitude of the tasks facing the nations over the next two decades and a half. Of the 185 countries for which data is given, 153 belong to that category called 'developing'. Wide disparity in incomes marks these countries with the median values of GNP per caput ranging from US \$ 151 for the developing low to \$4,127 for the developing high income economies. India falls at the bottom of the income

ladder, along with 40 others, among those with a GNP per caput of \$280 or less.

Together the 153 developing economies supported, in 1975, slightly over one-half of the world's 4 billion men and women. Roughly 30 per cent of this population was concentrated in India, whose population, estimated at a little over 600 million at a GNP per caput of \$ 141 was only slightly less than the combined population of the 21 industrialised countries whose GNP per caput ranged from \$ 1,300 to over \$ 7,000.

If the child is a God's gift the developing countries are, and will continue to be, liberally endowed with His munificence. With high birth rates—median values of crude birth rates range from 23.8 to 46.6 for the developing against 16.2 for the industrialised economies—and declining death rates, these countries are likely to face a more rapid acceleration in their population. While the economically well endowed industrialised nations will be having a population growth rate distinctly below the world average, these countries, with an annual increase of 3 per cent in population, will surpass the world average.

By the year 2000, the developing economies of the world will thus be burdened with a relatively larger proportion—around 60—of the world's 6 billion inhabitants. And India, despite an expected decline in the birth rate, will be saddled with over a billion people, around 25 per cent more than the combined population of the industrialised countries.

The developing countries have, and, it appears, will continue to have, a relatively larger burden of dependent children compared to the developed nations. In 1975, these countries had roughly 7 children under 15 years of age for every 10 persons above that age, against a ratio of  $3\frac{1}{2}$  children to 10 adults in the industrialised nations. Only a slight decline in this burden is indicated for these economies over the next 25 years, though among these India is likely to fare slightly better with more children surviving to working age. By 2000, the world will have nearly 2 billion children below 15 years of age, nearly 70 per cent of whom will be in the developing countries with a little more than a quarter in India.

True, people in the developing countries try to lighten their load of child-hood dependency by sending the children to work. The median value of child labour force per thousand population is as high as 32.0 for the developing low income countries against 1.1 for the industrialised. No doubt the family income gets augmented but employment of children will be hardly compatible with a high standard of education and will be a poor solution to the problems facing such nations.

The trends are clear—an aggravation in the existing inequality in numbers in relation to the means of production. The challenge is imposing and only time will tell to what extent we are geared to meet this challenge. Perhaps what is needed is an extension of the Year of the Child to a Decade of the Child to enable us to meet the task successfully.

—K. KASTURI

128th Report of the Public Accounts Committee (Sixth Lok Sabha) 1978-79 Lok Sabha Secretariat, New Delhi, pp. 251, Rs. 10.50.

The PAC report (1978-79) deals with the Central Social Welfare Board, (CSWB) under the Ministry of Education and Social Welfare, and directly concerned with the Central Government's programme for children. The report was presented to the Lok Sabha in April, 1979 and to the Rajya Sabha almost simultaneously. Political events of the recent months have culminated in the dissolution of the sixth Lok Sabha as a result of which this report did not get a chance for a debate in Parliament. It is hoped, however, that, whatever may be the future developments, this PAC report will receive the serious attention of the post-election Central Government, as it deals with many vital questions of public administration.

The CSWB was established in 1953 by a resolution of the Central Government which "implied that it functioned more or less as a limb of Government". According to the standing orders of the Government, grant-in-aid cannot be given to a government body. The legal anomaly of such an arrangement was repeatedly commented upon by the PAC in its earlier reports (19th, 38th and 52nd reports) and also by the Ministry of Law. These reports recommended that the Board should have the status of a statutory body. As a result of these recommendations and after a good deal of debate and deliberations, the CSWB was registered as a charitable company under section 25 of the Company's Act, 1956, with effect from April, 1969. A subsequent attempt to register the Board as a Central society under a new Bill to be enacted by the fifth Lok Sabha did not fructify as the Bill lapsed with the dissolution of the fifth Lok Sabha. The report refers to the new thought being given by the Government to the question of according a suitable status to the Board. This will have to await the formation of a new Central Government after the midterm election.

It is amazing that even after 25 years after the establishment of the CSWB, it continues to suffer from an uncertain and unenviable status, despite the professions of the various Central Governments since independence regarding the importance of social welfare programmes, especially for the needier sections of the population, and for children. It passes one's understanding how the Board could continue to disburse large amount of public money for more than 15 years without a proper legal status, and against the prevailing rules and procedure which prohibited giving grants to a government body. This anomaly continues to be present even today in regard to the State boards which do not have a proper juridical status. It may be recalled that at the time of its inception, the administrative arrangement of the CSWB was hailed by some as a unique experiment which combined the best features of a government body and a voluntary organisation. In retrospect, it appears that it had the worst of both.

The report points out that one of the main objectives of the CSWB was

to "study the needs and requirements of social welfare organisations from time to time through surveys, research and evaluation". The PAC found that while some sort of evaluation of the selected programmes was attempted now and then through appointment of study teams and review committees, "no comprehensive system of objective evaluation of the welfare services to meet the specified and surveyed needs of the voluntary organisations has been evolved". So the PAC has recommended that "a proper method of evaluating the implementation of the programmes of the Board and their impact on the society should be evolved". It is high time that this recommendation is acted upon by the Government.

The report has highlighted several serious defects in the financial administration of the Board, whose most important function is to give grant-in-aid to voluntary organisations in social welfare throughout the country. These include: inadequate supervision and control over the funds released, whether directly or through the State boards, to the voluntary organisations; shortage of technical field staff for inspection of institutions; failure to enforce the procedure laid down for sending the progress reports, audited statement of accounts, utilisation certificates, etc.; incomplete information in the inspection reports by the field officers; failure to visit the institutions applying for grant by the members of the State board; diversion of funds released by CSWB, by the State boards, to pay the salaries of their staff or for other unauthorised purposes, and even misutilisation of funds.

The weakest link in the chain is the State social welfare boards, which function as part of the State Governments without independence or proper status. They are not always constituted soon after the expiry of the term of the previous members and office bearers as they should be. In many instances their term is not specified. They do not get in time the State's share of the funds for approved programmes including the money for payment of the salary of the staff. The report points out that some of the State boards have not paid the staff salary for as long as 33 months. Added to this is the insecurity of the staff, overload of work, and the absence of a system of guidance and supervision.

Lack of functional coordination from top to bottom is another major defect in the effective implementation of the various welfare programmes which have been ambitiously conceived without adequate planning, study of needs and problems.

Among the programmes which the PAC considers 'over ambitious' is the ICDS. In the draft Fifth Plan, it was envisaged to start about 1,000 ICDS projects in a phased manner during the Plan period for which an outlay of Rs. 140 crores was provided. Later on it was decided to take up only 33 projects during 1978-79 on an 'experimental' basis with a revised outlay of Rs. 7.40 crores. The PAC was told that the scheme of the ICDS was being evaluated by the PEO of the Planning Commission before its expansion in the Sixth Plan.

Another instance of 'over ambitious' programming by the CSWB is the nutrition programme for children of 3-5 years of age, from families of lower economic group.

This programme was originally started in 1970-71 by the department of social welfare and is being implemented by the CSWB on behalf of the department. In view of the fact that 1979 is being celebrated as the IYC and an ambitious programme of child welfare has been announced as part of it. it will be instructive to give some details of the PAC findings on this programme. Even after seven years since the starting of the programme, there was no central coordination committee in existence. The department of social welfare stated that the committee set up as part of an earlier programme was entrusted with the function of coordination of the new programme. But this committee did not include among its members, the chairman of the CSWB nor representatives of the all-India voluntary organisations implementing the programme! The Board was not able to provide the PAC with relevant papers regarding the terms and conditions of the programme. No progress reports from the State boards were received by the CSWB since the inception of the programme. During 1975-76 the welfare officers had visited only 830 out of 3,928 balwadis implementing the programme.

The scheme visualised coverage of 460,000 children at 10,400 balwadis and day-care centres during the Fourth Plan. At the end of the Fourth Plan in 1974, however, the number of balwadis added was 4,527 with 169,047 beneficiaries. According to the 1971 census the target infant population (0-6 years) was 114.7 million. According to an ICMR study only 50 per cent of the benefit under the scheme goes to the children and the balance is incurred for administrative and other overhead expenditure. Between 1972-73 (i.e., a year after the scheme was launched) and 1977-78 there was no significant increase in the number of balwadis as can be seen that their number was 4,527 in 1972-73 and 4,873 in 1977-78. The number remained more or less the same for three years in between and had even declined slightly during another two years. At the same time, while there was an increase in the amount released during the period of five years from Rs. 94.89 lakhs to Rs. 122.19 lakhs, the number of beneficiaries rose only very slightly from 168,847 to 191,585.

There was no independent nationwide evaluation of the programme since its inception in 1970-71. According to a recent study of the balwadi programme of the CSWB, there was 'a fair representation' of the children from the weaker sections among the beneficiaries while the programme was meant exclusively for the children of weaker sections. The PAC lamented the lack of functional coordination at all levels despite the multiplicity of the agencies involved.

The report, which is written in the usual official style, may not be too interesting or easy to read. But it contains a wealth of information not normally available to the student of public administration and social policy

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in the other official documents published by the government. So, despite its language and style, it merits a serious study.

-SHANKAR PATHAK

#### Child and the Law

EDS. S.N. JAIN and USHA LOGHANI, Indian Law Institute, N.M. Tripathi Pvt. Ltd., Bombay, 1979, pp. xx+218, Rs. 30.

The Child and the Law brought out by the Indian Law Institute in the International Year of the Child covers a detailed study of about 115 legislations relating to children (the book claims to have examined over 250 statutes) and gives the impression that there is more than enough laws on children in our country. To begin with, our constitution—the fundamental law of the land—guarantees special protection to children against exploitation and makes provisions for giving them opportunities and facilities for their material and moral development. A number of legislations have been enacted in the country before and after independence for regulating the employment of children in various occupations with a view to protect their health and wellbeing. The Centre and a majority of the States have passed Children Acts "to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children". The criminal law of the landthe Indian Penal Code, the Code of Criminal Procedure and a host of other laws, apart from giving protection to children from anti-social hazards. provides for certain privileges and concessional treatment to them in view of their physical and mental limitations. There are other areas also where the law has shown special consideration for children. Thus, the family law—the law of marriage, legitimacy, guardianship, adoption, maintenance and custody -of different communities and the law of contract and tort generally protect the interests of children. On the whole, the legislative trend indicates a favourable disposition towards children signifying thereby that, in general, the lawmakers have not been indifferent towards their problems; rather, they have been conscious of the need for providing special protection to them in view of their tender age, physique and mental faculties. On the face of these legislations, it is difficult to subscribe to the view that "in the past, the law has lashed the child, not loved it". However, this does not mean that the law on the child in India is perfect and adequate; nor does it mean that the legislative performance in the child's area has been satisfactory. On the contrary, there are defects, deficiencies and inadequacies in the existing law as well as gaps to be covered by new legislations, not to speak of the indifference towards its implementation by the law agency and, at times, the ignorance on their part of the law itself. The primary object of the present study has been to collect and put together in one place the different laws relating to children and to identify the lacunae, ambiguities and deficiencies in the existing law, by analysing the legal provisions and the legislative gaps, in the light of the legislative requirements of the national policy resolution on children. It does not, however, attempt to make an empirical study of the actual operation of the various laws but leaves it to be undertaken by future researchers.

The book deals with the various legislations relating to children under six major heads, viz, child labour, child welfare, criminal law, family law, contract and torts and testimony and suits. A brief description of the constitutional provisions relating to children, the UN declaration of the rights of the child (1959), the UN resolution declaring the year 1979 as the IYC (1976), the national policy for children adopted by the Government of India (1974). the constitution and functions of the national children's board and the UN draft general principles on equality and non-discrimination in respect of persons born in or out of wedlock find a place in the introductory chapter. It is also appropriate that a mention has been made there about the report of the working group appointed by the Government of India (1974) on the question of standardisation of the age of the child under different statutes. The working group had come to the conclusion "that it is not feasible to standardise the definition of the age of a child for application in all cases", but felt that it may be possible to have uniformity of age in particular fields for certain specific purposes. This aspect, however, should have been dealt with more elaborately in the book, as the statutes show great variance in fixing the age of the child not only in respect of the same type of legislation in different States but also in different legislations in the same State. If the Central legislations, when made applicable to States (there are a number of them) do not prescribe different ages in different States, it does not sound logical for the States to prescribe different ages at least under similar enactments.

In the field of 'child labour', the provisions of the pre-independence and post-independence legislations, regulating the employment of children in various occupations, have been examined along with the ILO conventions and recommendations and their defects and drawbacks highlighted. Efforts have also been made to compare the Indian law provisions with international standards, to find out the deficiencies, and the reasons for them have been explained.

It may, however, be pointed out that in the discussions under the Shops and Establishment Acts a small error has crept in. It is anomalous to speak about the working hours for children when the Acts prohibit their employment in shops and establishments. Regarding the treatment of the subject, it appears that a chronological arrangement of the statutes would have been more logical, especially when a distinction is sought to be made between the pre-independence and post-independence legislations.

The law relating to the treatment and rehabilitation of the socially handicapped children such as the neglected, destitute, victimised and the exploited is the focus of discussion under 'child welfare'. Since the important legislations in this area are the Children Acts enacted by the Centre and the States, a detailed study of these legislations is attempted. (The delinquent children are dealt with separately under the head, 'criminal law'.) The provisions of the Central legislation are analysed in detail and compared with State enactments to highlight their similarities, differences and deficiencies. (The Bihar Act to which reference has been made frequently, was passed in 1970 during Presidents' rule, but was allowed to lapse. At present is there a Children Act in that State?). The Central Act has been found to contain certain statutory provisions in comparison with those of the State enactments. For instance. the provision for separate adjudicatory machineries for dealing with neglected and delinquent children (not negligent and delinquent children, p. 75) viz. the child welfare boards and the children's courts/juvenile courts, with a view to separate them from each other, does not find a place in most of the State enactments where it is the juvenile court which deals with neglected children also. There is similar separation for long-term institutional care in the Central statute—the children's homes to receive neglected children and special schools for the delinquent. However, even the Central Act is deficient in so far as it does not provide for such separation during the pendency of the enquiry. The absence of any provision for free legal aid to the child is also pointed out as another defect in the law.

The author, while acknowledging generally the adequacy of the existing laws in relation to child welfare, has suggested some modifications in the definition of the 'neglected child' in two respects. One may agree with the suggestion that a child who is found without 'settled place of abode' should be treated as a neglected child only if he is exposed to physical, mental or moral danger or is in need of control, in view of the particular situation in our country which has a large unsettled population. However, it does not seem necessary to delete the provision which defines the neglected child as one 'who has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child' in view of the safeguards provided under the Act in treating a child as a neglected child. The board, under the Act, is required to hold an enquiry in the prescribed manner before passing the order and that too only when it is satisfied that the child is a neglected one. Thus, holding of an enquiry is a condition precedent for passing an order under the Act, and provides adequate safeguard against unjustifiable interference with the liberty of such children.

Apart from the Children Acts, the chapter deals with a number of other laws enacted for the welfare of the child, viz., the Suppression of Immoral Traffic in Women and Girls Act 1956 (SITA), the Vagrancy and Beggary Acts in force in the different States, the legislations providing for free and compulsory primary education to children, and the Health Acts. While the scope of SITA, in comparison with the Children Acts, has been explained fully and their co-existence justified, the justification for applying the provisions of the Beggary Act to children along with the Children Acts, under

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which a 'neglected child' includes a child who is found begging also, is not similarly explained.

The criminal law of the land also accords special concessional treatment to children. The Indian Penal Code not only grants special exemption to children from liability in respect of crimes committed by them but also gives special protection to them from becoming the victims of anti-social elements in the society. There are other legislations seeking implementation of social policy with the aid of criminal sanctions and which aim at protecting society from the hazards of immoral traffic, beggary, child marriage, and the like. The Children Acts and the Code of Criminal Procedure prescribe different procedure for determining the criminality of children. These aspects have been considered in detail under the 'criminal law'. The legislations that have been examined include the Indian Penal Code, Criminal Procedure Code. SITA, the Child Marriage Restraint Act of 1929, the Young Persons Harmful Publications Act 1956, and the Children Acts. The procedural variation in the case of the child offender and the judicial proceedings in criminal cases relating to children have been critically examined and their limitations and drawbacks highlighted along with the problems of implementation of some of the social legislations. One may readily agree with the author that "the appositeness of a social legislation like the Children Act cannot justifiably fulfil the objectives of the legislation so long as it seeks to enforce the law through the over-worked and over-burdened enforcement agency of the police." As has been rightly pointed out by him, what is really needed is an administrative set-up of well-trained and skilled social workers for the enforcement of the provisions of the law.

An extensive study of the family law of different communities—the law of marriage, legitimacy, guardianship, adoption, maintenance and custody—has been made with a view to examine the rights and privileges as well as the social hardships and legal disabilities of children. The rights and liabilities of the child under the law of contract and tort as well as the trustworthiness or otherwise of the testimony of children also form part of the study.

The objective of the study is limited: To collect laws relating to children at one place and to reveal their deficiencies, if any, on the basis of analysis and study of the statutory provisions. Within this limited objective, the Institute has performed a commendable job. But the study will be complete only when an empirical research on how the laws are being administered is carried out. Is it enough to pass the law—even a law without defects and deficiencies? "Law is what laws does and not what law lisps. A law that does not perform is a double hoax." Is the legislative performance in the field of child satisfactory? It has been observed by an eminent Supreme Court Judge that even the existence of some of these legislations was not known, or easily ascertainable. Under such circumstances, it is not surprising that their implementation is not given proper attention to.

-M.K. BALACHANDRAN

Report of the Working Group on Employment of Children (mimeo.)
Ministry of Education & Social Welfare, Government of India, Department of Social Welfare, New Delhi, 1976, pp. 114.

The Government of India, Department of Social Welfare, appointed a Working Group in April 1974 to consider the various problems that arose out of employment of children, and the result is the report under review. Normally an official report of this type will stand time barred for review after 4 or 5 years, as in this case, but here both the problems discussed in the report as also the recommendations made are still of considerable value as nothing important seems to have happened on child welfare in the intervening years, as we will presently see.

The problems of child workers, the abuse and exploitation, are not unknown. The Royal Commission on Labour in India had pointed them out at length in its report as far back as 1931. Since then a number of statutory and other measures were instituted to alleviate the hardships of child labourers. Besides, the Constitution of India in Article 24 forbids the employment of children below 14 years. Yet nothing much has come about by way of help to children and this is evident from the findings of official commissions like that on child labour (1954), the National Commission on Labour (1969), etc.

The Working Group acknowledges the complex nature of the problems of child workers. It agrees with the generally held view that in the long run the objective should be prevention of employment of children. The short term considerations, however, pose a dilemma. On the one hand there are the family and other compulsions which often force a child to take up employment. In a large majority of cases the families are poor and the dependency ratio among them is very high, so the deprivation of the child's contribution. however meagre it be to the family's income, might considerably deplete family resources. Moreover, the educational and social service facilities to keep the children usefully occupied are not extensive enough at present. As opposed to these, an early entry into employment denies the child his right for full growth and development. Besides, the entry of child workers, relatively cheap, would considerably shrink the employment market for the adults and depress their wages. Taking all these and the present socio-economic situation into consideration, the Working Group feels that the balance of advantage does not lie in an outright ban but in regulating child employment and providing protection to children against abuse and exploitation. With this as its starting premise, the Group has made several recommendations. The more important are:

(a) The provisions in the various legislations dealing with child workers, on aspects like minimum age, hours of work, etc., are not uniform. But more than improving the provisions, what requires priority consideration is their enforcement. The weaknesses in the imple-

- mentation of the existing legislations need immediate corrective action.
- (b) When the results of full and proper enforcement have been duly assessed, and if the level of social and economic development so indicates, the scope and coverage of the existing legislations and enactment of new legislations may be taken up. This may, however, be preceded by indepth studies on health, education and other needs of children and the administrative requirements to suit regional/local variations.
- (c) It is essential to constantly review the list of occupations hazardous to children and to enforce the ban vigorously on the employment of children in those occupations.
- (d) Employers need to be educated on the existing legal provisions in respect of child labour and their rationale.
- (e) At the present level of economic development in the country, it is not possible to prescribe a minimum age for employment that is uniformly applicable to all sectors and in the entire country.
- (f) Departments of Education, Rural Development and the Ministry of Information and Broadcasting should make concerted efforts to educate the parents, particularly in the rural areas, about the advantages of putting their wards to school than in the employment market. Measures like vocationalisation of school curricula, adopting the school timings to suit the work demands in farming, etc., would be of considerable help in this regard.
- (g) Voluntary organisations like mahila mandals, mohalla committees, welfare societies and public leaders should educate the employees and the employers, so that the working conditions of young domestic servants are made as conducive as possible.
- (h) The strength of the existing factory inspectorate be suitably augmented to help a better enforcement of provisions pertaining to the child workers' welfare.
- (i) Special employment bureaux be set up to facilitate placement guidance to children in need of work and for providing appropriate vocational training. Voluntary organisations should be encouraged to take up the responsibility in this regard.
- (j) Since child labourers in the unorganised sector are predominantly in the rural areas, it is necessary to educate the members of panchayati raj bodies, so that they can mobilise public opinion against exploitation of child workers.
- (k) The present scope of the Children Act 1960 should be examined with a view to make it more comprehensive so that opportunities for development are available to those children who may otherwise be obliged to work in hazardous conditions. It also should be seen whether the term 'victimised children' under Children Act 1960 may

be made more comprehensive to include children who are forced to work in hazardous occupations.

The recommendations largely follow the line of thinking of the earlier official committees and should be generally acceptable. Two deficiencies of the report are however particularly conspicuous: (a) the discussion on some of the vital issues confronting child workers is carried out in very broad and general terms. This is so even in cases where the terms of reference are very specific. One glaring instance is the failure to list the occupations hazardous to the growth and development of the child. It is true that data on child workers and their needs is not easy to come by. But that should not have prevented the Working Group from taking the initiative to compile and analyse the primary data from whatever source it could lay its hands on. (b) The attention given to the problems of the child workers in the unorganised sector is very brief and cursory. According to the 1971 census, out of 10.7 million child workers, as many as 10 million are in the rural areas, mostly in agriculture and allied activities, which are not organised. But all the existing statutory measures for child workers are confined to the organised sector. The latter accounts for hardly 12 per cent of the child worker population (6.1 per cent in manufacturing, including household industry, and 6 per cent in trade and commerce). Further, according to the National Commission on Labour, the problem of child workers is almost non-existent in the big and medium establishments (where the enforcement of the laws is relatively easy). It persists in varying degrees in such sectors as small restaurants, seasonal and other small establishments in far flung areas, etc. This should make it clear where the problems of child labour largely persist and what should be the direction of all the reform effort. It may perhaps be too much to expect either the panchayati raj bodies or the voluntary social service organisations to come forward to shoulder any major responsibility in respect of children in the rural and in the unorganised sector. Voluntary bodies can make a good contribution, but only as a supplementary endeavour. The initiative has to come from the government, Central and the States, with appropriate promotional and regulatory programmes. Sooner these programmes are launched. easier would be the fulfilment of the objectives of the statutes. In any case the large majority of child workers should not be made to wait for long to get a redressal to their problems. -K.S.R.N. SARMA

# Study of the Young Child-India Case Study

National Institute of Public Cooperation and Child Development, New Delhi, 1976, pp. 201.

The book under review is essentially a report on a study of the young child, a UNICEF sponsored project. The report is the outcome of a joint endeavour of professional experts from child development, social work, and

other disciplines. The contributors to this volume are associated with national and international organisations connected with child welfare.

It is a descriptive study based on review of empirical research studies, case studies of programmes, international documents, and statistical material from the Government of India. The book is divided into three parts dealing with all the aspects of the young Indian children and the existing services for them. In addition, there are useful annexes and case studies, particularly meant for the practitioners in this field.

There is no dearth of information about the needs of pre-school children in the areas of health, nutrition, education and recreation, but the book under review evidently scores well over the others in that it is the only single compilation of the efforts made for the overall development of pre-school children in India. The study has fulfilled the aim of providing the basis for the government's decision to give priority to pre-school children in the five year plans. The very first chapter discusses the problems of 'reaching the unreached'. Though it has been widely recognised by the elite of our society that the child should be top priority, the fact remains that the children of the underprivileged are the most deprived. The question arises: are we putting any effort to eliminate the vulnerability of the weaker sections of society? The second chapter discusses the voluntary efforts in the field. It indicates that the gap between needs and services of pre-school child welfare will continue to be large until concentrated efforts are made by voluntary organisations and the government to work together with determination. In our country. there is a widespread network of voluntary organisations. What we have to make sure is that there is no duplication of efforts in terms of delivering the goods. This is a serious problem and we are yet to channelise our services through one single body at the centre.

It is since three decades that we started development planning in India. Why are we still struggling to fulfil the minimum requirements of children? The third chapter is a careful scrutiny of each plan in relation to child welfare. The emphasis in the child welfare component of the five year plan has shifted from plan to plan. Looking back over the plans, an interesting thought occurs. We have badly miscalculated on the development goals. The discussion in this book highlights certain gaps and weaknesses in programme planning and implementation. This feeling is supported also by a case study in Tamil Nadu. As one reads through, in the successive plans, child as a top priority is reiterated, yet for decades this has remained as an ideal of a just society.

In this perspective and in the detailed analysis of the problem in the light of the existing socio-economic and political conditions, the authors show commendable analytical insight. The study adequately covers the different aspects concerning the problem. Documentation is excellent. All this adds up to this book being good material for understanding the pre-school child. With its profuse bibliographical references at the end of each chapter it will be useful to researchers.

—SARALA B. RAO

Children in Delhi Slum: A Survey of their Life Conditions (mimeo.)

MUSAFIR SINGH and NAGENDRA NATH, Central Institute of Research and
Training in Public Cooperation, 1974, New Delhi, pp. 66+Tables.

The study conducted a few of years ago, has now revived its significance in the context of the present International Year of the Child. Here the authors have emphasised the need for an integrated child welfare programme for slum children. So far these children in the age-group 0-6 years were beneficiaries of the special nutrition programme sponsored by the Government of India in the Fourth Plan. However, the programme could not but cover a small proportion of children even in this age-group due to meagre financial support. The authors strongly feel that the age-group 6-14 should also be brought under the ambit of the child welfare programme.

The study examines the life conditions of Delhi slum children in the age-group 6-14 years based on a sample of 300 families in five selected jhuggi-jhonpri clusters of different sizes. The objectives of the study are: (i) to high-light the socio-economic background of these children, (ii) to describe their life conditions, (iii) to find out the nature of their job, (iv) to identify their needs and problems, and (v) to suggest measures to improve their life conditions.

After having stated the problem, the objectives and the methods of data collection and field survey in chapter I, the authors deal with the ecology of Delhi slums in chapter II although without making any distinction between a slum and a squatter. This confusion lasts till the end of the study. Chapter III presents a socio-economic profile of the slum families whereas their life conditions and job position are dealt with in chapter IV. The major findings of the study are presented in chapter V. It is noted that most of the slum dwellers live below the poverty line spending a large proportion (67.7 per cent) of their income on food, and only 5.4 per cent and 0.8 per cent on education and recreation, respectively. Other data presented in the study highlight the depth of poverty of slum dwellers and the poignancy of their inhuman conditions. According to the study 40 to 45 per cent of the children in the age-group 6-14 years do not attend school. Their diet is very poor in quality and quantity. Due to a total absence of parks and playgrounds, these children play indoor games. Out of 136 non-school going children only 18 were engaged in occupations and 22 in jobs while the rest were idle at home.

In the last chapter, the authors suggest improvement in the living conditions in the existing slums rather than pushing people to the urban periphery. Every slum locality must have a primary health centre, a community centre and a well-equipped children's park. The family planning and the special nutrition programmes should make their headway in these areas. School facilities will have to be expanded considerably. The exploitation of the debtors by the moneylenders is to be reduced by establishing government

financial institutions. Lastly, in order to effect development changes in the slum communities, the need for voluntary organisations must be realised.

-GIRISH K. MISRA

# Report of the National Seminar on Education of the Teachers for Pre-School Child

Indian Council of Child Welfare, 1978, New Delhi, pp. 102.

The importance of pre-school children has been viewed as the basic requirement for the future national development. A child is considered as 'human capital' of a nation. Unfortunately this aspect of development is not getting adequate attention. The importance of the subject multiplies on account of its population percentage, service institutions, types of programmes and expenditure incurred *vis-a-vis* the beneficiaries. Although we have facilities for school-going children, children in the age group 0-6 require more attention and care by the governmental and voluntary agencies.

The seminar was organised on the initiative of the Indian Council of Child Welfare, New Delhi, which is a known institution for taking up the cause of children in India. It was aimed: (1) to evaluate presentation of different models of pre-school education in India, and (2) to assess the content and methodology of various teaching training programmes and skills required for implementation. Broadly the seminar focused attention on ways and means

for effecting health care and development of pre-school children.

The seminar discussed eleven papers on the different facets of health and care practices of pre-school children presented by the specialists in the area from all over the country. The specialists discussed the various dimensions of the problem and gave important recommendations with regard to policy planning and administration, personnel, methods and material and models/ programmes for pre-school children. These recommendations were based on considerations like: goal oriented training programmes and effectivity, the identified gaps between objectives and their application, success and failure of programmes and the effectivity of the evaluation programme. The seminar also passed a resolution on the importance of health and care of pre-school children and requested the government to appoint a commission to go into the details of the programmes regarding health and care and take necessary welfare measures to cover the age group 0-6.

It is a welcome endeavour to have a seminar of this type in an important area like health and care of pre-school children but the best efforts of the government and voluntary agencies in the IYC would be to implement the recommendations of the seminar. This way we can serve the children better and do justice to our given concern over their welfare.

-M.K. NARAIN

Social Legislation in India, Vol. I & II K.D. GANGRADE, Concept, Delhi, 1978, Vol. I, pp. 288, Vol. II, pp. 260, Rs. 125 for 2 Vols.

This study in two volumes is the result of a collaborative effort of the Delhi School of Social Work and the Faculty of Law of the University of Delhi. A pioneer study entitled 'Social Legislation—Its Role in Social Welfare' was published by the Planning Commission in 1956. As much change had taken place after that, there was need to update the literature. The research design for this study was prepared by S.N. Ranade who had also directed the study up to June 1975. K.D. Gangrade completed the work.

The first volume gives the various statutes and the second volume contains articles written by experts on the various enactments, dealing with specific problems.

Social legislation is a vast area; topics claiming priority are covered in these two volumes. Laws governing social institutions; laws protecting the interests of children; laws providing for the treatment of certain social problems; laws governing the operation of charitable societies, and legal aid to the citizen are some of the topics discussed. Both the volumes have been written in a way that even the common man can get to know of the ways in which law deals with social problems.

The first volume has eleven chapters. Some are completely devoted to children, others partially, while yet others directly or indirectly touch upon children. In chapter two of volume one, for instance, section 'A' discusses the Child Marriage Restraint Act 1929 and the consequences of a child marriage. The injunction prohibiting child marriage and the role of child marriage prevention officers get due importance here. The new step taken by the State of Gujarat, providing for child marriage prevention officers to be assisted by non-official advisory bodies of social workers, is commended. Mention is also made of the fact that the Child Marriage Restraint Act 1929 does not apply to Jammu & Kashmir. Section 'B' discusses the legitimacy of children of void and voidable marriages. Chapter three which deals with the Hindu, Muslim, Christian, Parsee and Jew legislation, under section 'D' makes a special reference about the distribution of property among widows, children and parents and describes what happens to the division of the share of a predeceased child. Chapter four is on the law of adoption where the problems of adoption and its legal aspects under the Hindu law and the law of minority and guardianship of various communities in India are discussed. Generally the first five chapters, dealing with social problems affecting the individual and the family, thus concern the welfare of children also. Chapter seven is a general description about legislations concerning beggars, vagrants, and handicapped sections of the society and makes a reference to children, specially when the juvenile lepers are discussed. Chapter eight which focusses attention on criminal administration also gives special treatment to child and

young offenders.

The second volume's chapter seven steals the show in that volume. This chapter deals with the welfare of children. All aspects of child welfare right from the constitutional provisions to the national policy for children. 1974, are covered. A brief review of both civil and criminal legislation affecting children has been given and the conclusion is that there is no consistent or integrated approach to child welfare legislation. Children are being treated 'incidentally' in the course of handling other matters. The child is made to face the formality-ridden awe-inspiring courts. Absence of a uniform civil code adds to the problem. The issue of guardianship of the destitute and homeless children is not faced squarely either in the civil code or in the Children Acts. There is no legal authority for giving a destitute child in adoption or to foster care. The draft legislation is yet to materialise. The disappearance of informality from the juvenile courts with the revision of the Criminal Procedure Code in 1973 has been mentioned. The conclusion is that more needs to be done for the welfare of children and that the civil and criminal laws and procedures, affecting children, must be looked into by a high level commission so as to give them conformity with the directive principles of state policy and the national policy on child welfare.

Chapter five, which deals with inheritance among Indian Muslims, describes the orphaned grand children and makes a mention that in Egypt, Morocco and Pakistan their interests have been safeguarded. It also describes the adopted child's inheritance where a passing reference to Malaysia has been made. There is a plea here for legal facility of adoption being made available to Muslims, setting forth with clarity the shares of the sharers, residuaries, distant kindreds and unrelated successors who are heirs under the Muslim law.

Chapter eight deals with the legal framework of adoption among Hindus. Speedy enactment of the Adoption of Children Bill 1972 is highly recommended by the author because this will provide for State supervision of adoptions, not there at present.

The whole gamut of social legislation is very difficult to be covered and a critical appraisal of even some of them is equally difficult. The attempt made in this study, therefore, deserves all appreciation. Both the volumes are written in a simple language. The lucid style adds to its use. It can serve as a good textbook for the students for master's courses in social work and other social sciences and also to those interested in social legislation.

-SHANTA KOHLI-CHANDRA

Educational and Vocational Rehabilitation of the Blind in Delhi—A Study (mimeo.)

PUSHPA R. MATANI and M.S. YADAV, National Institute of Public Cooperation and Child Development, New Delhi, 1979, pp. 271.

Of all the forms of physical disability, blindness is the most appalling.

Bereft of sight, the blinds require special institutional assistance for education and vocational rehabilitation. This is a great task yet absolutely necessary for their economic upliftment. A few voluntary welfare agencies have come forward to impart education and vocational training to the blinds with the assistance of the department of social welfare. But more often such sincere attempts come to grief owing to lack of occasional review and feedback. The report under review, therefore, is a useful study as it has attempted to study the various types of facilities provided by the welfare agencies for the educational and vocational training of the blind. It also probes into the working conditions of the blind ex-beneficiaries and the attitude of employers towards their blind workers. The study assumes importance especially because 1979 happens to be the year of the child and 1981 is going to be declared by the UN as the international year for disabled persons.

Divided into six chapters, the study sets out its objective and sample design in the first chapter. By interviewing 59 beneficiaries out of 547 total beneficiaries of the seven educational and training-cum-production centres located in Delhi and 80 per cent of the ex-beneficiaries turning out during 1968-76, the study has given a substantial sample coverage.

Chapter two gives a description of the welfare agencies in terms of criteria for admission, financial condition, staff composition, etc. It is heartening to note that the proportion of the blind to the sighted instructors was almost equal. This speaks of the initiative, courage and drive on the part of the blinds to acquire expertise for even imparting training. However, lack of enough number of higher educational institutions hinder the educational aspirations of the blinds. The report, therefore, suggests upgrading all the blind schools to the higher secondary level. The suggestions deserve serious consideration.

Chapter three deals with the background data of the respondents and presents their socio-economic profile. It reveals that a large number of the respondents lost their sight because of inadequate preventive and curative measures at correct time. This shows the inadequacy of the existing health care system in India which still continues to be inaccessible to a large number, resulting in loss of sight to nearly half a million children. Even the educational and vocational training institutions, located as they are in large urban centres, preclude a substantial number of blinds residing in remote areas from taking advantage from them.

Chapter four examines the extent to which the existing programmes have been geared to achieve the objective of vocational rehabilitation of the blinds. The study reveals that though the efforts of the agencies are laudable, they have still to go a long way in providing a proper integrated educational programme to the blinds. In view of the existing constraints even in the supply of traditional teaching aids (braille books especially on science, mathematics, social studies), making available to them modern educational aids like tape recorders, braille typewriters, services of resource teachers, tutors, writers, etc., will remain a far cry. It is worth noting that in spite of this the blind

students fare remarkably well by achieving 100 per cent result at board and school examinations securing even first and second divisions.

As for training in arts and crafts, the study emphasises the need to orient the programme to non-traditional and remunerative vocations. The respondents have given valuable suggestions in this regard. It is hoped that the vocational training institutes will positively respond to them.

Chapter five describes the working conditions of the employed blind and analyses the views of the blinds about their jobs, job satisfaction, as also the employers' perception of their blind employees. The study shows that a large proportion of blind workers were not doing technical work for which they were trained. But those who look upon the blinds as incapable of doing anything independently should note that a majority of the workers were working without any special facilities like escorts, more elbow room to facilitate movement, etc., and were "doing as much work as the sighted workers" (p. 173).

Chapter six sums up the findings of the study and suggests steps for refurnishing the educational and training programmes for the blinds.

The study, in short, presents an elaborate review of the existing educational and vocational programmes for the blinds and also an analysis of the problems encountered by them at the educational and training institutions and on the job. However, one will not agree with the authors' hypothesis that "longer the duration of jobs, greater will be the job satisfaction of workers" (p. 161). The authors could well have avoided repeating the shift from traditional vocations to modern ones and the lack of facilities of teaching aids.

-GANGADHAR JHA

Learning to Do: Towards a Learning and Working Society—A Report
National Review Committee, Ministry of Education & Social Welfare,
Government of India, 1978, New Delhi, pp. 60.

The academic debate on the importance of education usually has a reassuring degree of consensus. In an inegalitarian society educational benefits filter through the demand pressures of various interest groups. The doubts and disillusionment of the 1970s, following the earlier optimism in education as an investment in the development of human capital, boggle the mind of educational planners, administrators and educators. With the revaluation of dominant strategies for development and the crisis created by the country's limited capacity to absorb its educated manpower, vocational secondary schools are thought to provide a viable alternative to the sterile pursuit of purely academic education and to make education 'socially relevant and useful'.

The National Review Committee for the +2 curriculum was set up under the chairmanship of Prof. M. Adiseshiah to review the NCERT's document on vocationalisation of secondary education, study the syllabi and courses adopted by the member schools of the Central Board of Secondary Education and recommend a plan of action for introduction of vocationalisation at the secondary stage.

The report gives broad guidelines for course patterns for general education and the vocationalised spectrum. It lays emphasis on the need for the secondary stage to be integrated with the goals of national development and priorities in agriculture, rural development and adult literacy by inclusion of the socially useful productive work component in the general education spectrum and agriculture and related rural occupation and managerial. commercial, health and para-medical courses in the vocationalised spectrum. The report emphasises that no rigid course pattern should be laid out, as vocational courses should be planned keeping in view the local needs and based on manpower requirements of the area assessed by the occupational surveys in liaison with the employers, experts and with the involvement of local agencies and the community. The report also discusses other related issues like location of schools, infrastructural facilities, counselling and placement, training of teachers, curriculum and textbooks, apprenticeship and recruitment policy and a continuous review and evaluation method built within the education system. For a better coordination between various agencies offering vocational and technical courses, a national apex body is recommended where other agencies offering vocational education will be represented.

The effort to link education with productivity has many weak links. Is the teaching community in a position to assume new responsibility? To what extent could recruitment and wage policies be suitably readjusted? How far will these courses, which are designed to be terminal in character, equip the students for self-employment? Some schools under the Central Board of Secondary Education adopted the scheme of vocational courses prepared by the NCERT. The feedback from these schools pointed out that vocational courses did not meet an encouraging response because the majority of students wanted jobs in the organised sector and were not prepared to take risks unless a particular course led them to specific jobs. The climate for self-employment was not very encouraging as the training did not give them confidence for an investment. The initial investment needed by the schools to start these courses may become useless if the courses have to respond to the changing employment market. A reorientation in the thinking of public and private sector enterprises will also be necessary. Education cannot provide a solution to all the problems of a society but it should be responsive to its specific needs and concerns.

Statistical Profile of Children and Youth in India
United Nations Children's Fund (UNICEF), 1977, New Delhi, pp. 125.

Supposed mainly to be of children and youth, the report under review contains data in 60 tables on the economy, demography and vital statistics, health, family welfare, nutrition, education and other aspects of social statistics. These data are no doubt of use for socio-economic planning and it is also good that they are made available at a single place. But those who look forward to details regarding children in these pages will be disappointed. There is no youth, anyway. There are other shortcomings also worth mentioning.

For the purpose of planning, comparable data are necessary, not often available in this book. For example, most of the data on population relate to 1971 whereas data of other socio-economic characteristics are for other periods. The percentage of infant deaths under one year in the States is given for 1970, but the number of hospitals and their beds are for 1974, and so on.

In some tables the headings are not given properly. For example, in table 23 the data given are of the number of districts, community development blocks, panchayats, etc., Statewise. It is not mentioned in the title the year for which the information relates. In table 24 the heading is 'Targets and Achievements during Fifth Five Year Plan (1974-79)', whereas the data given are targets and achievements during the Fifth Plan for beds, medical colleges, actual admissions, and doctors.

If a social planner can get over these shortcomings, the report should prove to be of some value to him.

-N. C. GANGULY

## Social Welfare Administration

D. PAUL CHOWDHRY, New Delhi, Atma Ram & Sons, 1979, pp. 300, Rs. 40.

Social welfare administration is increasingly engaging the attention of scholars and administrators who genuinely feel that this area has not been studied in detail and in depth. Social welfare administration refers to the process of applying professional competence to implement programmes of social welfare through social agencies in fulfilment of the objects and policy of the agency. The book under review describes briefly the social welfare agencies, their registration, constitution, bye-laws, organisation, personnel, supervision, office procedure and budgeting. It also covers grants-in-aid, accounting, auditing, and the mechanism and regulation of fund raising. The role of volunteers, coordination, public relations, regulation of standards, evaluation and social legislation have also been included with reference to Indian conditions. In about two hundred pages, the author has discussed twenty-fourtopics, presumably with an eye on the syllabi of manyuniversities.

The significance of this book in this special number is that the author has devoted a chapter to social legislation with particular reference to legislation for children. For healthy growth, a child needs adequate attention, home, understanding, protection, security, nutrition, health care, etc., and the legislative provisions are just one aspect, necessary but not sufficient. The national plan of action has recommended greater legislative power to protect, promote and safeguard the interest of children. The author has rightly focussed his attention on this important aspect, and a vigorous effort to promote community awareness on the need for effective implementation of all existing social legislation, including that for children, cannot be over stressed.

The field of social welfare does not easily lend itself to any simple or uniform pattern of administration. The complexity of the social situation and of the social problems does not permit of any such solution. Organisational goals tend to dominate over functional aspects and normally not enough attention is paid to keep alive the zeal of diversification of programmes and flexibility of operations to suit different aspect of social welfare. Voluntary agencies play a key role in any area of social welfare administration and attempts are thus made to minimise the bureaucratising tendencies. The general impression however is that in many voluntary organisations, vested interests dominate decision-making and it is very difficult to dislodge them.

The book, as a whole, makes interesting reading and the appendices towards the end add to its usefulness. Bibliography is up-to-date and the price reasonable. A little more care in proof reading and adding more description to factual information would have enhanced its readability. At places, there is more of mathematical presentation than arguments. In spite of its limitations, the book would remain a guide to many examinees and there is always scope for improvement in subsequent editions.

-Sudesh Kumar Sharma

Working Children in Urban Delhi (A Research Report) Indian Council for Child Welfare, April, 1977, pp. 173.

The study is designed to portray the socio-economic and environmental conditions of working children in urban Delhithrough: (i) household enquiries; and (ii) ad hoc surveys in selected occupations. The study is supplemented by a few case studies both of the household variety and occupational type. The first chapter deals with the 'Nature and Dimension of the Problem' in terms of the magnitude of working children and their availability and distribution by sex and occupation based on 1971 census. Notwithstanding the somewhat more stringent definition of workers in 1971 (compared to 1961 census), the number of child workers in the age-group 0-14 in Delhi has increased from about 10,500 in 1961 to 14,800 in 1971 giving an increase of

about 40 per cent; and consequently, the number of child workers has increased. Their proportion to total labour force was 1.3 per cent for urban Delhi as a whole. Within the precincts of these dimensions, the nature of the problem is not at all clear. What sort of problem the study is designed to grapple with and what are its postulates, is something which is not explicit.

Chapter 3 of the study is entitled 'Some Socio-Economic Parameters' which, to a great extent, determine the working and living conditions of child workers at any point of time. The identified parameters are: (i) place of origin and length of residence in Delhi; (ii) caste and religion; (iii) the nexus between the occupational profiles of parents and children; (iv) levels of income, (v) household size; and (vi) housing and sanitation. The study has conceptualised these factors which have an impact on the working and living conditions of child workers but to say "it is analytically difficult to firmly establish the cause-and-effect relationship", is not correct. And I do not subscribe to this view. These relations could have been measured, as there is no dearth of analytical tools and techniques. This would have given an added importance to the study.

The occupational studies as dealt with in chapter 5 provide a wealth of information on various aspects of the child workers and their living and working, physical and socio-economic environmental conditions. Likewise, 'Some Case Studies', undertaken in chapter 6, provide a clue to an inverse relationship between child and parent and the 'attitude' and 'outlook' of parents and children. These case studies also substantiate the aweful environmental conditions of 'hotels' and 'dhabas', manufacturing/servicing establishments which are hardly congenial to the development of the child.

Among the various occupational groups studied, children engaged in the collection of rags and other waste material were found to be miserable, while those working in unregistered tea stalls and dhabas, seemed to be no better (p. 118). The study also points out that there is no conformity in the provisions laid down by the Delhi Shops and Establishment Act, 1954, the Minimum Wages Act, 1948 and the Factories Act. The Factories Act totally bans the employment of children below 14 while DSEA permits the employment of children above the age of 12. These are known legal lacunae of the existing juridical structure which need to be rectified as the law is a social good. The study further points out that "aspects like working hours and rest intervals are not very relevant to domestic workers, shoe-shine boys, rag and waste material collection boys and part-time workers such as those engaged in collection and delivery of milk bottles and evening newspaper hawkers" (p. 117).

Of many suggestions made, the reduction of minimum age to 12 for entry into the Apprentice Act for the acquisition of knowledge and new skills or for upgrading existing skills, together with the facilities for employment counselling and vocational guidance and training deserve special mention. The study, no doubt, gives a good deal of information about the working

children. But there are printing mistakes which reflect not only the poverty of proof reading but also an indifferent attitude of the Council; viz., on page 4 Table 1.3 there is no mention of the measuring unit for absolute figures which ought to have been in thousands. On page 63, para 5.6.1, the sentence reads 'In fact, every type of collected.' which makes no sense. And on page 119 there is mention of the 'Maximum Wages Act'. These are a few samples but the document is strewn with several such palpable errors.

-R.K. WISHWAKARMA

Working Children in Bombay—A Study (mimeo)
MUSAFIR SINGH, V.D. KAURA and S.A. KHAN, National Institute of Public Cooperation and Child Development, New Delhi, 1978, pp. 316.

In the normative context of modern society child labour is considered to be a social evil. The early years of life are meant to equip oneself with knowledge and skills for playing adult roles. Taking up a job at an early age does affect the growth of a child's personality. However, social and economic realities are such that social norms are hard to conform to and we find large numbers of children taking up jobs at an early age.

The major causes of child labour are rooted in ignorance and poverty. Poverty is both the cause and effect of child labour. Complete eradication of the evil is possible only when there is an appreciable increase in the standards of living of the people. This is a long term national goal but short term measures are possible and are needed to lessen the deleterious effects of labour on children. The study under review provides an insight into the problem of working children in the metropolitan area of Bombay.

The objectives of the micro-study are to highlight the socio-economic factors which compel children to take up work and to examine the various facets of the work life of the child with a view to find out the consequences of work on the wellbeing of the child. The study also discusses the effectiveness of relevant legislation and points out the shortcomings in its implementation.

The study is important in that it is based on primary data collected from child workers, their parents and employers through structured interview schedules. The schedules cover such aspects as the socio-economic background of the child and his family, the perception of the parents and children towards work and working conditions, the impact of work on the physical and psychological wellbeing of the child, the attitudes of employers towards child labour and their awareness about the legal provisions governing child labour. This is supplemented by unstructured interviews with officials of the Bombay Municipal Corporation and the Department of Labour and Factories and also by secondary data from other official records, reports, books and journals, etc.

A multi-stage sampling procedure is used in the survey. Ten slum pockets were selected in consultation with the Slum Improvement Board from 807 slum areas of Bombay. In the second stage, census enumeration of all households in the pockets was undertaken. The third stage involved preparation of the list of working children pocketwise. Finally, 300 children, 203 boys and 97 girls, constituting roughly one third of the total child workers enumerated, were selected for the purpose of study.

The report is presented in eleven chapters. The first two chapters are devoted to give an overview of the problem and the third to a description of the universe of study and the methods of sampling used. Chapters four and five are devoted to the socio-economic background of the families of working children and the pre-work life of the child. The fact that child labour is deep rooted in poverty and ignorance is amply brougt out by the data. Majority of child workers came from families consisting on an average 5.9 members but earning less than Rs. 400 per month. They lived in houses lacking even the basic physical amenities. In twenty per cent of the families interviewed, not a single member ever went to school. Of those who did go, a majority dropped out before completing their fourth standard. The child entered work between ten and twelve years of age. The eldest child in the family, irrespective of age and sex, was deployed to supplement the family income, which accounted for about 25 per cent of it.

A brief review of the wage employed and self-employed children is presented in the next two chapters. Most of the child workers were in unskilled and ill paid jobs and were concentrated in the unorganised small scale tertiary sector. Legal prohibition of child labour from the organised sector may have pushed the children away into the unorganised. More than fifty per cent of the children were in production units, service and repairs, and trade and commerce. The market for child labour is not governed by well defined rules or procedures. The resourcefulness of parents, relatives, friends and neighbours mattered most. Thirty-five per cent of children did not get even a day off in a week. A negligible percentage were entitled either to medical, earned or casual leaves. Twenty-eight per cent of children were not entitled to any religious or national holidays while the rest were getting holidays ranging from seven to fifteen days during the year. Majority of the children, both wages employed and self-employed, had to work for about 10 to 12 hours. The long hours of work were all the more tiresome to the child because of the irregular spread of the rest intervals. The frequency and duration of the rest interval often depended upon the convenience of the employer and the nature of the job he was engaged in and not on the needs of the child. By and large, the rest interval was after four hours of work. Construction workers, scrap collectors and most of the self-employed children had to work in the open. Self-employed children engaged in trade and commerce had to guard themselves from the vigilant eye of the corporation official. Notwithstanding all these troubles, 64 per cent of children felt

happy about being employed and being economically independent. They were, however, not so satisfied about their average monthly income of Rs. 86. Restaurant and repair workers were the most satisfied and construction workers and scrap collectors least satisfied even though they were better paid than the children in other occupations. Parents felt that work had instilled a sense of responsibility in the children. Parents were aware of the education to children, almost all of them agreed that education was essential. A large number (60 per cent) said that they would like their children to study upto higher secondary level and another 12.5 per cent up to college level. Though the awareness and aspirational level of the parents was thus quite high, their capacity to achieve it was limited, as the report underlines.

The presentation of the report would have been better if chapter eight, giving the views by children, parents and employers towards child labour was integrated with the previous chapters. Chapter nine which gives a description of working children in different occupations does not serve any purpose. Chapter ten discusses the effectiveness of the relevant legislation. The ignorance of the employers about the existence of laws governing child labour is colossal and revealing. Only 18.6 per cent of the 159 employing establishments seem to be aware of some of the provisions governing child labour. Only nine employers mentioned about officials visiting their establishments for inspection. The economic interests of the children and of their parents and employers help the latter in escaping from the long arm of law. The final chapter gives a summary of the conclusions and offers some suggestions.

On the whole, the study is a very useful contribution to the understanding of the problem of child labour in an urban setting. As 93 per cent of child labour are in rural areas, it would be highly useful if similar micro-studies were undertaken in those areas also. It would help the social welfare, education, rural development, and the legal departments in formulating schemes in a coordinated manner so that the harmful effects of work at an early age on the growth of a child's personality are mitigated. A select bibliography would have added to the value of the study.

—M. Lakshmiswaramma

# Declaration of the Rights of the Child

Proclaimed by the General Assembly of the United Nations on 20 November 1959 (General Assembly resolution 1386 XIV)

#### Preamble

Whereas the peoples of the United Nations have, in the charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom.

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialised agencies and international organisations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

## Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

## Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

#### Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

## Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

## Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

#### Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

#### Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.



# National Policy for Children

## RESOLUTION

The Government of India have had under consideration the question of evolving a national policy for the welfare of children. After due consideration, it has been decided to adopt the policy enunciated below:

#### Introduction

The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

## Goals

The needs of children and our duties towards them have been expressed in the Constitution. The resolution on a national policy on education, which has been adopted by Parliament, gives direction to state policy on the educational needs of children. We are also party to the U.N. declaration of the rights of the child. The goals set out in these documents can reasonably be achieved by judicious and efficient use of the available national resources. Keeping in view these goals, the Government of India adopts this resolution on the national policy for children.

#### Policy and Measures

It shall be the policy of the state to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The state shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth. In particular, the following measures shall be adopted towards the attainment of these objectives:

- (i) All children shall be covered by a comprehensive health programme.
- (ii) Programmes shall be implemented to provide nutrition services with the object of removing deficiencies in the diet of children.
- (iii) Programmes will be undertaken for the general improvement of the health and for the care, nutrition and nutrition education of expectant and nursing mothers.
- (iv) The state shall take steps to provide free and compulsory education for all children upto the age of 14 for which a time-bound programme will be drawn up consistent with the availability of resources. Special efforts will be made to reduce the prevailing wastage and stagnation in schools, particularly in the case of girls and children of the weaker sections of society. The programme of informal education for preschool children from such sections will also be taken up.
- (v) Children who are not able to take full advantage of formal school education shall

be provided other forms of education suited to their requirements.

- (vi) Physical education, games, sports, and other types of recreational as well as cultural and scientific activities shall be promoted in schools, community centres and such other institutions.
- (vii) To ensure equality of opportunity, special assistance shall be provided to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections both in urban and rural areas.
- (viii) Children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizens.
- (ix) Children shall be protected against neglect, cruelty and exploitation.
- (x) No child under 14 years shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work.
- (xi) Facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded.
- (xii) Children shall be given priority for protection and relief in times of distress or natural calamity.
- (xiii) Special programmes shall be formulated to spot, encourage and assist gifted children, particularly those belonging to the weaker sections of society.
- (xiv) Existing laws should be amended so that in all legal disputes, whether between parents or institutions, the interests of children are given paramount consideration.
- (xv) In organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment.

## Priority in Programme Formation

In formulating programmes in different sectors, priority shall be given to programmes relating to:

- (a) preventive and promotive aspects of child health;
- (b) nutrition for infants and children in the pre-school age along with nutrition for nursing and expectant mothers;
- (c) maintenance, education and training of orphan and destitute children;
- (d) creches and other facilities for the care of children of working or ailing mothers; and
- (e) care, education, training and rehabilitation of handicapped children.

#### Constitution of National Children's Board

During the last two decades we have made significant progress in the provision of services for children on the lines detailed above. There has been considerable expansion in the health, nutrition, education and welfare services. Rise in the standard of living, wherever it occurred, has indirectly met children's basic needs to some extent. But all this work needs a focus and a forum for planning and review, and proper coordination of the multiplicity of services striving to meet the needs of children. A National Children's Board shall be constituted to provide this focus and to ensure at different levels continuous planning, review and coordination of all the essential services. Similar Boards may also be constituted at the state level.

#### Role of Voluntary Organisations

The Government shall endeavour that adequate resources are provided for child welfare programmes and appropriate schemes are undertaken. At the same time, voluntary



organisations engaged in the field of child welfare will continue to have the opportunity to develop, either on their own or with State assistance, in the field of education, health, recreation and social welfare services. India has a tradition of voluntary action. It shall be the endeavour of the state to encourage and strengthen voluntary action so that state and voluntary efforts complement each other. The resources of voluntary organisations, trusts, charities and religious and other endowments should have to be tapped to the extent possible for promoting and developing child welfare programmes.

## Legislative and Administrative Action

To achieve the above aims, the State will provide necessary legislative and administrative support. Facilities for research and training of personnel will be developed to meet the needs of the expanding programmes and to improve the effectiveness of the services.

## People's Participation

The Government of India trust that the policy enunciated in this statement will receive the support and cooperation of all sections of the people and of organisations working for children. The Government of India also calls upon the citizens, State Governments, local bodies, educational institutions and voluntary organisations to play their part in the overall effort to attain these objectives.

Sd. Secretary to the Government of India.

#### ORDER

Ordered that a copy of the resolution be communicated to the Cabinet Secretariat, the Prime Minister's Secretariat, all the Ministries/Departments of the Government of India, the Planning Commission, the State Governments and the Governments/Administrations of Union Territories.

Ordered also that the resolution be published in the Gazette of India for general information.

August 22, 1974

Sd. Secretary to the Government of India

# The Child in India

Demographic Profile

Of the 1550 million children in the world, one in every six is an Indian. The 248 million children of India thus comprise nearly 16 per cent of all the world's children.

India's population is rising faster than the world rate, and the addition of some 13 million infants every year gives India one of the world's youngest populations. The 1971 census showed that 42 per cent of the Indian population consists of children under 14 years of age. Children below 6 years comprise 21 per cent of the population.

An index of the population composition is that while the entire population of India in 1911 was 252 million, projections indicate that children alone already numbered 248 million in 1976, and a more recent estimate puts the child population in 1977 at 255 million. The twentieth century will close with the number of children in India almost certainly exceeding the total Indian population of 279 million recorded in the 1931 Census.

Urban-Rural Ratios: An estimated 81 per cent of India's children live in the rural areas. According to population projections for 1976, the rural children number 183.9 million, tribal children 14.9 million and urban children 49.7 million. These projections also indicate that nearly half of India's children (48.7 per cent) are below 6 years of age. Of the 121 million in this age group, 89.7 million live in the villages and 7.3 million in tribal areas, while 24.2 million are in urban areas.

Living Conditions: According to 1976 projections, about 99.4 million children—nearly two-fifths of the total Indian child population—live in conditions adverse to survival. Of them, 48.5 million, or nearly half, are less than 6 years old.

The 1976 estimates place 35.8 million of these youngest deprived children in rural areas, 9.7 million in urban areas and 2.9 million in tribal areas. In the next age group (7-14 years), 50.9 million children live in extreme poverty—37.7 million in the villages, 10.2 million in towns and cities and 3 million in tribal areas.

A more recent estimate (April 1977), indicates that as many as 126 million children may be living below the poverty line.

#### Birth Rate and Mortality

With a baby born every one and a half seconds, there are 1.7 million births a month and 21 million births a year in India. Balanced against the annual total death rate of 8 million—which includes 3.2 million infants and children—this means that about 13 million children are added to the country's population every year.

The rural birth rate—35.8 per 1000 population—is much higher than the urban birth rate of 28.3 per 1000 population.

Mortality: The child's fight for survival does not always succeed, and for every 1000 babies born alive, 122 die in the first year of life.

Infant and toddler deaths add up to 2 million in the 0-12 month age group and 1.2 million in the 1-4 year group. Together, these deaths account for 40 per cent of the total annual deaths in the country.

The combined mortality rate for the lowest age group (0-4 years) is three and a half times that of the next age group (5-14 years).

The infant mortality rate has fallen steadily during the century, but remains high. From 204 per 1000 live births in 1915, and 161 per 1000 live births in 1945, the average

national infant mortality rate currently stands at 122 per 1000 live births. However, ruralurban imbalances persist, with the rural rate averaging 131 per 1000 live births as compared to the urban average rate of 81 per 1000 live births. After the first week of life, the infant mortality rate of females is higher than that of males throughout the first year of life.

Life Expectancy: If an Indian child survives the early childhood years, life expectancy for a boy is 53 years and for a girl, 52 years.

#### Definition

Birth Rate: The number of live births in 1 year per 1,000 population. This will vary with the average age of the population and with the male/female ratio, as well as with other factors.

Infant Mortality Rate: Infants under 1 year of age dying in 1 year, per 1,000 live births. The younger the child at death, and the greater the distance from the registration centre, the less likely it is to be registered either as a birth or death.

Death Rate: The number of deaths registered per 1,000 population. This gives the crude death rate. Deaths may be further analysed by age, by sex, by occupation, by social class, by disease, by district, and by various other relevant factors. Death rates by age-groups may be calculated per 1,000 of population or per 1,000 of that age-group.

#### Health

Children in India face many health hazards, and many die young for lack of timely health care.

Forty per cent of all deaths in India occur among children below 5 years of age. Of these deaths, about half are of children less than a year old.

In the lowest age group (0-12 months), 50 per cent of deaths are due to dysentery, diarrhoea, respiratory diseases and gastro-intestinal disorders. In the 1-4 year group, mortality seems to be specifically related to respiratory, digestive and parasitic diseases. These in turn are aggravated by poor environmental sanitation, over-crowded living conditions, and malnutrition. Ignorance of simple health precautions also takes its toll.

It is estimated that 30 per cent of all school-going children are suffering from one or other ailment. Of children's illnesses treated at health centres, 56 per cent are reported to be related to intestinal infections, respiratory complaints and nutritional disorders. Eye ailments and defects due to poor diet and poor hygiene are also common, and many children needlessly go blind in early childhood. Tuberculosis is widespread in small children.

Health Services: About 80 per cent of Indians live in rural and tribal areas, but only 30 per cent of hospital beds and 20 per cent of doctors in the country are available there.

Medical care for the rural population is provided by government-run primary health centres. Each centre is expected to serve from 70,000 to 80,000 people, spread over a hundred villages, with the help of two doctors. Some PHCs have only one doctor. Each PHC auxiliary nurse-midwife serves 10,000 people in 10 to 12 villages. The average distance between the village and the health centre is 9 km., and about 87 per cent of people attending the PHCs are from villages within a 6.4 km radius. Many children do not get timely attention because 50 per cent of village women are daily wage earners, and they cannot carry their small children to the PHC without losing family earnings. Under the government's new rural health scheme, villagers trained as community health workers are gradually extending health care to village homes. At the time of childbirth, few women receive skilled assistance; the proportion ranges from 20 to 50 per cent in different parts of the country.

The number of hospital beds for children—about 9,300—is barely 50 per cent of the minimum requirement, and the country has only 25 children's hospitals and 424 paediatric wards—to meet the needs of nearly 250 million children. Most of these are located far from the villages. There are major regional disparities: Bihar, Gujarat and Haryana do not have any children's hospitals at all.

The existing maternal and child health services reach only a small proportion of the women and children who need them. Women in the 15-45 age group constitute nearly 22

per cent of the population, and children in the 0-6 age group comprise another 21 per cent. Meeting the health needs of this 43 per cent of the population remains a major national task.

Water and Health: Water-borne and water-related diseases are the leading killers of infants and children. About 163 million children (0-14 years) in rural India do not have access to safe drinking water, and are thus exposed to infection which can prove fatal.

In 113,000 villages, the drinking water supply is either more than 1.6 km away, or is substandard, and is responsible for diseases like cholera and guinea-worm, or problems related to a mineral content too high for health.

In another 214,000 villages, the water supply from wells, streams, tanks, ponds and rivers, is adequate in quantity, but is open to the risk of pollution.

There are at least 185,000 villages where the supply of water is both inadequate and unprotected.

It is estimated that about 8.7 per cent of deaths in the first year of life, 19.1 per cent of deaths in the 1-4 age group and 15.2 per cent of deaths in the 5-15 group are due to diarrhoea.

#### Nutrition

Malnutrition is a major cause of death among children in India. Every month 1,00,000 children die from its effects. An even larger number of children die of infectious diseases, their poor diet having made them susceptible to infection and vulnerable thereby to death.

Children survive malnourishment depending on the degree of deficiency. For every child who shows clinical signs of malnutrition, there are probably at least 4 children suffering from milder grades of malnutrition without clinically apparent symptoms. There are an estimated 60 million malnourished children in India.

Approximately 80 to 90 per cent of Indian children do not receive adequate amounts of key vitamins and minerals; 75 per cent do not receive adequate calories and about 50 per cent do not receive enough proteins.

Acute diarrhoeal diseases are more frequent and serious among these malnourished children than among those of normal nutritional status.

Pre-School Children: Some 60 per cent of children in the 0-6 years age group suffer from nutritional anaemia and protein-calorie malnutrition in one form or the other. Almost 40 per cent of all deaths in the country occur in this age group and the majority of these fatal cases are attributed to kwashiorkar, vitamin A deficiency and anaemia. Again three-fourths of the children in this age group have body weights below 75 per cent of the standard weight of well-nourished children, 52 per cent suffer from moderate malnutrition, 23 per cent from severe malnutrition and only 3 per cent can be considered as having normal body weight.

Children from the low socio-economic strata suffer the worst, 80 per cent of them are victims of moderate or severe protein-calorie malnutrition, as shown by their sub-standard body weights.

School-going Children: It is estimated that 22 per cent of the school-going children show one or more signs of nutritional deficiency. The most common are anaemia, and lack of vitamin A and vitamin B-complex. A much higher proportion of school-going children from low socio-economic groups (56 per cent) show signs of moderate protein-calorie malnutrition, while 15 per cent show severe malnutrition, reflected in sub-standard body weights.

Vitamin A Deficiency: About 2.5 million children in India are threatened by blindness in early childhood because their diet lacks vitamin A. Severe vitamin A deficiency is estimated at a million cases. About 12,000 to 14,000 children of the toddler age group go blind every year because of this deficiency. Lack of the vitamin is also behind the night blindness that afflicts about 10-15 per cent of all children.

One out of every four cases of blindness is due to dietary deficiency of vitamin A, and is therefore preventible. The peak incidence of such blindness is in the 1-5 years age group.

Child Nutrition and the Family: Maternal malnutrition is a major contributory factor in

the premature birth of an infant. It has been found that 36 per cent of infant deaths are due to prematurity.

Studies also indicate that when the family size is small, the nutritional level of each child is better, while in larger families, the children born later are more prone to nutritional deficiencies. Research indicates that among the first three children born to a family, only 17 per cent show signs of malnutrition, while among the fourth and younger children 32 per cent had malnutrition symptoms.

#### Education

A Directive Principle of the Indian Constitution (Article 45) lays down that the state shall endeavour to provide free and compulsory education for all children until they complete 14 years of age. This was to have been achieved within a decade, but has not been realised so far.

The progress has been uneven from state to state, as between the urban and rural areas and as between boys and girls. For example, all urban areas have facilities for elementary and middle school education. In rural areas, 80 per cent of the habitations have a primary school within 1.5 km and over 60 per cent of the habitations have a middle school within 3 km. Out of a total of 575,926 villages in the country, it is estimated that about 48,566 are not served by any school at all.

Education is free for all children up to the secondary stage in 12 states and union territories. In 8 other States and union territories, it is free for all children up to the middle school stage. Another 8 states offer free education for all children up to the middle school stage, and up to a few more years only for girls. Two states offer free education for all children up to the primary school level and one of them offers an additional few years of free education for girls.

School Enrolment: Approximately 4.5 million children are being offered one kind of pre-primary programmes or the other. These form barely 5 per cent of the population in the 3-6 years age group and are mainly from the better-off sections of society.

Enrolment in schools has been slower than expected. Only 80.9 per cent of children in the 6-11 years age group, 37.0 per cent in the 11-14 years age group and 20.9 per cent children in the 14-17 years age group are enrolled in schools. The enrolment level for girls is much lower than that for boys. While the enrolment of boys of the 6-11 years age group is 97.5 per cent, it is only 63.5 per cent for girls of that group. In the 11-14 years age group, the enrolment of boys is 48.7 per cent, but that of girls is only 24.5 per cent. The gap widens further at the high school level (14-17 years) with enrolment of boys at 28.8 per cent and that of girls at just 12.3 per cent.

Dropout Rates: The school enrolment figures provide only one aspect of children's education, another being the rate of dropping out from school.

Out of every 100 children who enter class I, less than half complete class V and only 24 complete class VIII. The dropout rate for girls is much higher. Of every 100 girls who join class I, only about 30 reach class V. Thus, 70 per cent of girls who get enrolled leave school without attaining functional literacy.

## Handicapped Children

Four major disabilities afflict at least three million children in the country. Estimates list 2 million mentally retarded, 800,000 blind, 500,000 orthopaedically handicapped and 200,000 deaf children.

These modest estimates do not include the large number of children who are marginally or mildly handicapped. While about 12,000 to 14,000 children go blind every year due to vitamin A deficiency, about 10 to 15 per cent of all children suffer from night blindness. Available data does not give a clear picture of the actual incidence of these and other handicaps.

Services and facilities for the education, training and rehabilitation of handicapped

children are grossly inadequate. Existing services cater to only 4 per cent of the physically handicapped, 2 per cent of the blind, 2 per cent of the deaf and barely 0.2 per cent of the known mentally retarded child population. There are only 800 voluntary organisations and State institutions offering educational and training facilities to about 30,000 handicapped children.

Prevailing social attitudes towards mental and physical handicaps are an additional problem for the handicapped child.

#### The Deprived Child

The Submerged Segment: An estimated 46 per cent of the population live below the poverty line—48 per cent in the rural areas and 41 per cent in the urban areas. This means that approximately 108 million children live in varying degrees of destitution, 90.5 million of them in the villages and 17.4 million in the towns.

The Depressed Classes: There is a predictable overlapping of the child population living in poverty and that belonging to the scheduled castes and tribes. The vast majority of children belonging to the scheduled castes and tribes live in an environment that hampers even a minimum development, like urban slums, shanty towns, backward villages, and inaccessible tribal areas.

About 21.5 per cent of the total child population belongs to the scheduled castes and tribes. Among the 33.5 million scheduled caste children, 29.6 million live in the rural areas, and 14.8 million of these are below 6 years of age. All but 500,000 of the 15.9 million children of scheduled tribes live in rural areas, and 7.7 million of them are under 6 years old.

Destitute and Vagrant Children: The 1971 census listed 151,000 children as beggars or vagrants—120,000 in rural areas and 30,000 in the towns. Of those listed, West Bengal—with 26 per cent of the national total—accounted for the largest number. Uttar Pradesh, Andhra Pradesh, Maharashtra, Karnataka and Orissa have the next largest incidence of beggary, in that order. It is likely that the actual number of children in India pushed into beggary is greater than the census data indicates. Police records show that nearly a third of all beggar children have one or both parents living; the parents themselves use their children for begging. Other children may be victims of cruel exploitation in beggar colonies, where kidnapped waifs and strays are maimed and mutilated and forced to beg. Their earnings go to the so-called beggar barons.

'Throw-away' Babies: It is estimated that about a million babies out of the 21 million born every year become 'throw away' babies, abandoned soon after birth due to various social and economic pressures. Social workers' estimates place the number of destitute, orphaned and abandoned children at between one and five per cent of the total child population. Only about 25,000 of such children are in the care of some kind of institution. In most orphanages, female children outnumber males, reflecting the greater value placed on sons in Indian society.

Children of Migrants: Migrants are usually unskilled, displaced labourers moving from place to place in search of work. They seldom manage to get more than casual daily wages or short-term, seasonal employment. In 1971, the census listed 4.2 million children belonging to migrant families who had been in their place of residence for less than one year. Of these, 3.3 million children were in the rural areas, and 0.9 million in urban areas.

Most migrant families live at subsistence level. They do without protected water supply, without proper housing, sanitation or sewage services, and are often outside the radius of medical and schooling facilities. Migrants' children grow up exposed to disease and disability, and deprived of a settled existence. Formal education barely figures in their lives.

Both boys and girls of migrant families take up petty jobs to add to the meagre family earnings. An urban study showed that while about 19 per cent of the children of settled city-dwellers were workers, child labour among migrant children was as high as 80 per cent. There is no comparable data available on the labour rate among children of rural migrants.

Poor nutrition, low resistance to disease and insanitary conditions combine to undermine

the physical status of the migrant child. While the urban infant mortality rate is otherwise 83 per 1000 in some urban slums and migrant settlements it is as high as 140 per 1000.

Working Children

Lack of data makes it difficult to arrive at a reliable figure of the number of children pushed into the labour force by economic pressures. The 1971 census listed 10.7 million children as workers, but estimates indicate that the total child labour force may be as high as 30 million.

If it is assumed that 5 to 10 per cent of India's children are working, India has the largest number of child workers in the world. These children constitute about 6 per cent of the total labour force in the country.

Of the 10.7 million children classified as workers in 1971 census data, 7.9 million were boys and 2.8 million girls. This data does not seem to adequately reflect the role of girls in the family-based economy. The proportion of girls to female adult workers has been found to be about 10 per cent higher than the proportion of boys to male adult workers.

Where They Work: Where do child labourers work? The majority are in agriculture or farm related work, or in the unorganised sector. Of the 10.7 million listed as child labour in 1971, only those working in the organised sector of the economy are expected to benefit from various child protection laws. Most child workers are outside the scope of such protective legislation. Out of the known figures, about 78.7 per cent work as cultivators and agricultural labourers, and another 8.2 per cent are engaged in livestock raising, forestry, fishing, hunting, plantation and orchard work. About 6 per cent are in manufacturing and processing jobs, and another 6 per cent in household and other industries, with the rest engaged in trade, commerce, transport and storage.

The number of children employed in the unorganised sector is not reflected in census data and can only be guessed at. This sector accounts for children working as domestic servants, helpers in hostels, restaurants, canteens, wayside shops and similar establishments; hawkers, newspaper vendors, porters, shoe-shine boys, sweepers and scavengers, children employed in small workshops and repair shops, and helpers at construction sites engaged in breaking stones, loading and unloading goods. Their hours of work are long, their wages low and uncertain, their working and living conditions bad. They are at the mercy of their employers.

Where They Come From: According to the 1971 data, about 93 per cent of child workers belong to rural areas. They constitute 5.3 per cent of the total rural child population. The 7 per cent of child workers found in urban areas constitute 1.8 per cent of the total urban child population. The 1971 data places the incidence of child labour as highest in Andhra Pradesh, which accounts for 15.2 per cent of India's total child labour force, and 9 per cent of the State's labour force. The next highest recorded incidence is in Madhya Pradesh and Orissa.

Frequent migration seems to encourage early employment of children. Data indicates that as many as 80 per cent of the children of migrants are workers. This is four times higher than the rate among settled populations.

What It Means: Child labour deprives children of educational opportunities, minimises their chances for vocational training, hampers their intellectual development and by forcing them into the army of unskilled labourers, condemns them to low wages all their lives.

It is estimated that if workers under 18 years of age in India could be taken out of the labour force and provided education and vocational training, some 15 to 20 million unemployed adults would be able to find jobs on standard wages.

Exploitation: Existing legislation covering child workers in factories and establishments is not being adequately enforced. There are also areas where no legislative coverage exists, and others where the laws themselves permit early childhood employment.

Juvenile Delinquency

Juvenile crime accounts for 3.4 per cent of all cognisable crime in India. Its rate is estimated to be 6.4 per 100,000 population.

Contributing Factors: There seems to be a strong relationship between poverty and the incidence of juvenile crime. It is found that the lower the income of the family, the higher the incidence of juvenile crime. Among the children arrested for crimes under the Indian Penal Code, it was found that 83 per cent belonged to families where the joint income of parents and guardians was less than Rs. 150 per month; 13.4 per cent of families whose income was between Rs. 150 and Rs. 499 per month; 3.12 per cent to families whose income was between Rs. 500 and Rs. 1000 per month and 0.36 per cent to families whose income was above Rs. 1000 per month.

Among the children apprehended, it was found that 48 per cent were illiterate, 34.6 per cent were below the primary level of schooling and 11.5 per cent were above the primary but below the higher secondary level.

Pattern of Crime: Among the crimes committed by juvenile delinquents are murder, kidnapping, abduction, dacoity, robbery, burglary, theft, riot, criminal breach of trust and cheating. The largest percentage of juvenile crimes fall under the Gambling Act, the Prohibition Act and the Indian Railways Act.

The Spread: About 30 per cent of juvenile crime was reported in Maharashtra, followed by 18 per cent in Gujarat, 16 per cent in Tamil Nadu and 11.5 per cent in Madhya Pradesh.

Among the children apprehended, it was found that 17 per cent had been apprehended for repeated crimes.

Enforcement of Laws: Most of the Children Acts have a clause for providing a 'place of safety' where child offenders can be kept in custody separately from the adult offenders. Despite this, it is estimated that in the various states and union territories of India, there are 10,000 children under 16 years of age confined to prisons along with adult offenders.

Existing legislation in most states does not mention anything about the time limit for detention of the child till he is brought before the court. Often, because of this, children are kept in detention for long periods without being brought before a magistrate.

## Children in Need of Day-Care

Many of India's children are neglected during early childhood for lack of day-care services. Shortage of such services often pulls an older sister out of school to shoulder the task, or forces a working mother to take small children to work sites, where they face added hazards.

The 1971 census lists 16.6 million rural children and 2 million urban children less than 6 years old, whose mothers are workers. The 1971 data also lists 31 million women workers, of whom about 20 million belong to the most needy sections of society. About 94 per cent of women labourers work in the unorganised sector where employers do not provide any services for their children. Day-care facilities for the children of these working mothers remain a major unmet need.

What the Law Says: The law does provide for day-care services for children of certain categories of women workers, but many employers do not fulfil legal obligations. Women working in the unorganised sector, or in small establishments are not covered by such provisions. Nor are women as clerks, teachers, nurses, and similar lower-level white collar employees.

Under the Contract Labour Regulation and Abolition Act of 1970, a contractor must provide a creche wherever 20 or more women are employed as contract labour. This is seldom done.

Under the Factories Act (Section 48), every factory ordinarily employing 50 or more women workers has been obliged to provide and maintain creches for children under 6 years old. But this stipulation of the Act is openly violated, and in 1973 there were only 901 factories in the country providing this facility. With the enforcement of the Factories

(Amendment) Act of 1976, the obligation has been extended to every factory employing a minimum of 30 women workers.

The Plantation Labour Act of 1951 stipulates that every plantation employing 50 or more women workers should provide a creche for these workers' children. Strict enforcement of these laws is an urgent need. Day-care services are also badly needed by women workers falling outside the scope of these laws.

## Legislation

Legislative support for child welfare services in India is found in the Children Acts of the various states. These laws have a special relevance to the protection and rehabilitation of socially handicapped children such as neglected, destitute, victimised, delinquent and exploited children.

The biggest drawback of the Children Acts is that the 'child' is defined differently from state to state. In Madhya Pradesh, Uttar Pradesh and Punjab, a child means a person under 16 years, in Saurashtra and West Bengal a person under 18 years, in Telengana a person under 16 years, and in the rest of Andhra Pradesh a person under 14 years. In the union territories, a child is defined as a boy under 16 years or a girl under 18 years. As inter-state movement of exploited children cannot be prevented, these laws are not as effective as they could have been.

Some states, like Nagaland, Orissa, Sikkim and Tripura, have yet to enact any children's legislation. The union territories of Andaman and Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Lakshadweep and Mizoram have no institutional arrangements yet to apply the Children Act of 1960.

Protecting the Working Child: The main thrust of the Indian laws concerning child labour has been on the minimum age of employment, medical examination of children and prohibition of night work. In each of these directions, the standards stipulated are below the international levels laid down by the International Labour Organisation. Enforcement of the law is rendered difficult by a combination of factors: economic backwardness forcing the family to supplement its income by letting the children work; lack of educational facilities; the unorganised nature of a good part of the economy; and the smallness of most manufacturing units.

Minimum Age: A major deficiency in the protective legislation is the fact that there is no law fixing a minimum age for employment in agriculture, though it is the main occupation in the country and the bulk of child labour, 78.7 per cent of it, is engaged in this occupation. A minimum age has been fixed however at 12 years for plantations, 14 years in factories and 12-14 years in the case of non-industrial employment. But this leaves the small sector unregulated: for example, the Factories Act itself applies only to factories employing workers above a minimum number.

Medical Fitness: As for legal safeguards for the health of child workers, the law requires medical examination of children up to 18 years of age and that too for industrial employment only. But no standards are laid down for medical fitness. And there is no law in respect of medical examination of children working in the non-industrial sector.

Adoption of Children: The Adoption of Children Bill was introduced in Parliament in 1972, but has yet to be enacted. Its aim is to provide an enabling law for all Indians seeking to adopt the many abandoned, destitute, neglected and orphaned children in the country. This was in pursuance of the directive principle in the constitution of preventing the moral and material abandonment of children (Article 39 f).

The existing Hindu Adoptions and Maintenance Act covers only that community.

Child Marriage: Throughout the 50 years of its existence, the Sharda Act (The Child Marriage Restraint Act) has been an ineffective legislative showpiece. Although it was meant to prohibit child marriage altogether, the question of validity of a child marriage solemnised in violation of the statutory age requirements remained outside its scope.

The Child Marriage Restraint Amendment Act 1978 raises the minimum age of marriage

from 18 to 21 for boys and 15 to 18 for girls. Even with this amendment, the violation of the law would not affect the validity of the marriage once it has been conducted but only entail penal consequences. Offences under the Sharda Act have now become cognisable and even Muslim, Parsi and Jewish communities come within its purview even though it does not affect their personal laws. Parental consent no longer exempts a child marriage from the provisions of the amended law. This was a loophole in the original law.

Experience shows that legal changes may not cause marriages to be delayed, unless constructive opportunities are provided to the young persons whose marriages are sought to be postponed till the legally permissible age.

# Child Labour in India

According to a recent ILO estimate, there are 52 million working children in the world. Of these, approximately 29 million are from South Asia, 10 million from Africa, 9 million from East Asia and 3 million from Latin America and only one million will originate from developed countries.

Out of the 29 million working children in South Asia, 10.7 million child workers are estimated to be in India (1971 census). Out of total population of 548 million recorded in 1971 census, about 230 million were children below 15 years, *i.e.*, 42 per cent of the total population. The number of child workers according to the 1971 census was 10.7 million as against 14.5 million recorded in 1961 census. This steep decline can be assigned to the conceptual differences in the definition of 'worker' adopted in the 1971 census. Proceeding logically on the basis of the increase in population and the trends in the economy, the actual volume of child labour is likely to be much higher than the estimated 10.7 million from 1971 census. Children constitute 5.9 per cent of the total labour force of the economy.

The percentage of child labour to total population is as high as 9.24 in Andhra Pradesh whereas it is as low as 1.30 per cent in Kerala. Of the bulk of child labour in the country, nearly 93 per cent are in rural areas and the rest in urban areas. According to ILO estimate, 80 per cent of these working children would be classified as 'unpaid family workers'. The great majority of these children are in agriculture or in small scale industries in rural area and in workshops, petty shops and quasi family undertakings in urban areas. Seventynine per cent of the child workers are said to be employed as cultivators, agricultural labourers, all over the country. Eight per cent are engaged in livestock, forestry, plantation, etc., about 6 per cent in manufacturing and processing and another 6 per cent in household and other services/industries and the rest in trade, commerce and transport.

The first all India Agricultural Labour Enquiry conducted by the Ministry of Labour revealed that 4.9 per cent of the total agricultural labour force were children in 1950-51. It was 7.7 per cent in 1956-57. 7.4 million children are engaged in agriculture according to the 1971 census. The Rural Labour Enquiry conducted by the Ministry of Labour revealed that child agriculture labourers constitute 6 per cent of the total agricultural labour force in 1964-65.

Like most problems in India, child labour emerges out of the socio-economic conditions prevailing in the economy. Children are often forced to work due to economic needs and social conditions. Whatever might be the conditions leading to the children seeking employment—for economic considerations or otherwise, it would appear that the children frequently work under conditions detrimental to their health, welfare and development. Most of these children have never been to school or have dropped out of school at some stage or the other. A working child is deprived of education, training and acquiring skills which are pre-requisites for earning, sustaining and for economic development. The perception of child labour as a social problem has become an important feature of welfare consciousness among the public, trade unions, welfare and social service organisations and the state.

#### CONSTITUTIONAL PROVISIONS

"No child below the age 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

Article 39(c) lays down that 'the health, strength of workers-man, woman and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength.'

Article 39(f) proclaims

"That childhood and youth are protected against exploitation and against moral and material abandonment."

#### OTHER LEGISLATIONS

With a view to eradicate the problems of child labour the following legislations have been enacted regulating the employment of children:

The Children (Pledging of Labour) Act, 1933. The Act defines 'child' as a person who is under the age of 15 years. The Act prohibits the making of agreements to pledge the labour of children and the employment of children whose labour has been pledged. The Act also lays down that any agreements or contracts to pledge the labour of a child is void and imposes penalties on any such agreement or employment of a pledged child.

The second Act relates to the Employment of Children Act, 1938.

Section 3(1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation —

- (a) connected with transport of passengers, goods or mails by railway, or
- (b) connected with a port authority within the limits of any port, or
- (c) connected with cinder picking, clearing of an ash pit or building operation, in the railway premises, or
- (d) connected with the work in a watering establishment, at a railway station, involving the management of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train, or
- (e) connected with the work relating to the construction of railway station or with any other where such work is done in close proximity to or between the railway lines.

Sec. 3(3) No child who has not completed his fourteenth year shall be employed or permitted to work in any workshop where any of the processes set in the schedule is carried on.

#### The Schedule

- (1) bidi making; (2) carpet weaving; (3) cement manufacturing, including bagging of cement; (4) cloth printing, dying and weaving; (5) manufacture of matches, explosives and fire-works; (6) mica-cutting and splitting; (7) shellac manufacture;
- (8) soap manufacture; (9) tanning; and (10) wool cleaning.

Several other legislations and Acts have laid down special provisions an clauses pertaining to the employment of children.

- I. The 'child' is defined as follows in the different Acts:
- Beedi & Cigar Workers (Conditions of Employment) Act, 1966
   Sec. 2(b) 'Child' means a person who has not completed 14 years of age.
- Factories Act, 1948 and Minimum Wages Act, 1948
   Sec. 2(c) 'Child' means a person who has not completed his fifteenth year of age.

3. Mines Act, 1952

Sec. 2(c) 'Child' means a person who has not completed his fifteenth year.

4. Motor Transport Workers Act, 1961

Sec. 2(c) 'Child' means a person who has not completed his fifteenth year.

5. Plantations Labour Act, 1951

Sec 2(c) 'Child' means a person who has not completed his fifteenth year.

- II. The minimum age of employment of a child is given in various Acts as follows:
- 1. Factories Act, 1948

Section 67: No child who has not completed his fourteenth year shall be required to or allowed to work in any factory.

2. Mines Act, 1952

Section 45: No child shall be employed in any mines nor shall any child be allowed to be present in any part of mine which is below ground or in any (open cast working) in which any mining operation is carried on.

The minimum age for employment in mines above ground is 15 years.

3. Plantations Labour Act, 1951

Section 24: No child who has not completed his twelfth year shall be required or allowed to work in any plantation.

4. Indian Merchant Shipping Act, 1958

Section 109: No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except

- (a) in a school ship or training ship, in accordance with the prescribed conditions; or
- (b) in a ship in which all persons employed are members of one family; or
- (c) in a home-made ship of less than two hundred tons gross; or
- (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.
- 5. Motor Transport Workers Act, 1961

Section 21: No child who has not completed his fifteenth year shall be required or allowed to work in any capacity.

6. Beedi and Cigar Workers (Conditions of Employment) Act, 1966

Section 24: No child who has not completed his fourteenth year shall be required or allowed to work in any industrial premises.

7. State Shops and Commercial Establishments Acts

The minimum age of employment in shops and commercial establishments is 12 years in Bihar, Gujarat, J&K, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura, Uttar Pradesh, West Bengal, Goa, Daman and Diu & Manipur, and 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamil Nadu, Punjab, Delhi, Chandigarh, Pondicherry and Meghalaya. The minimum age of employment is 15 years in Maharashtra. There are no separate shops and commercial establishments Acts in Andaman & Nicobar, Arunachal Pradesh, Dadra & Nagar Hayeli, Lakshadweep, Nagaland & Sikkim.

8. Radiation Protection Rules, 1971

Persons below 18 years cannot be employed under the Radiation Protection Rules 1971.

9. Apprentices Act, 1961

Section 3(a) A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he is not less than 14 years of age.

- The Children (Pledging of Labour) Act, 1933
   Section 3: An agreement to pledge the labour of a child (below 15) shall be void.
- III. Prohibition of allowing children to work in hazardous occupations under the Factories Act, 1948 is given below:

## 1. Factories Act, 1948

Section 22(2): No young person shall be allowed to clean, lubricate or adjust any part of prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of machine if the cleaning, lubrication or adjustment thereof would expose the young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

Section 23(1): No young person shall work at any machine to which this section applies unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and—(a) he received sufficient training in work at machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

Section 23(2): Sub-Section (1) shall apply to such machines as may be prescribed by the (State) Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

Section 27: No child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.

Provided that if the feed-end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing; children may be employed on the side of the partition where the feed-end is situated.

Section 34(2): The (State) Government may make rules prescribing the maximum weights which may be lifted, carried or moved by children employed in factories or any class or description of factories or in carrying on any specified process.

#### IV. The hours of work for children are regulated as follows:

#### 1. Factories Act, 1948

Section 71(a): No child shall be employed or permitted to work in any factory for more than  $4\frac{1}{2}$  hours a day.

2. Minimum Wages (Central) Rules 1950

Section 24: The number of hours which shall constitute a normal working day shall be  $4\frac{1}{2}$  hours in case of a child.

3. Plantations Labour Act, 1951

Section 19: No child shall be required or allowed to work on any plantation for more than 40 hours a week.

4. State Shops and Commercial Establishments Acts

The hours of work for young persons in shops and commercial establishments are 7 per day in Andhra Pradesh, Bihar, Tamil Nadu, Tripura, Pondicherry and West Bengal; 6 per day in Gujarat, Maharashtra, Janmu & Kashmir, Uttar Pradesh and Delhi; 5 per day in Himachal Pradesh, Madhya Pradesh, Karnataka, Orissa and Punjab and 3 per day in Rajasthan.

5. Apprentices Rules, 1962

Section 8: The weekly hours of work of an apprentice while undergoing practical training shall be as follows:

- (i) The total number of hours per week shall be 42 to 48 hours (including the time spent on related instructions);
- (ii) Apprentices undergoing basic training shall ordinarily work for 42 hours per week including the time on the related instructions;
- (iii) Apprentices during the second year of apprenticeship shall work for 42 to 45 hours per week including the time spent on related instructions;
- (iv) Apprentices during the third and subsequent years of apprenticeship shall work for the same number of hours per week as the workers in trade in the establishments in which the apprentices is undergoing apprenticeship training. Provided, however, that short term apprentices may be engaged to work up to a limit of 48 hours per week.
- V. Children are prohibited from working at night according to the following Acts:
  - 1 Factories Act, 1948

Section 71(b): No child shall be employed or permitted to work in any factory during night.

(For the purpose of this Section 'night' shall mean a period of at least twelve consecutive hours which shall include the interval between 10 p.m. to 6 a.m.)

2. Plantations Labour Act. 1951

Section 25: Except with the permission of the State Government, no child worker shall be employed in any plantation otherwise than between the hours of 6a,m. and 7 p.m.

3. Beedi and Cigar Workers (Conditions of Employment) Act, 1966

Section 25: No young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.

(Young person means a person who has completed 14 years of age but has not attained 18 years of age).

4. State Shops and Commercial Establishments Acts

Night work for children and young person also prohibited under State laws relating to shops and commercial establishments, The children and young person are allowed to work between 6 a.m. and 7 p.m. in Andhra Pradesh, Gujarat, Maharashtra, Tamil Nadu, Pondicherry; 7 a.m. to 7 p.m. in Bihar and Kerala; 7 a.m. to 9 p.m. in Jammu & Kashmir and Madhya Pradesh; 6 a.m. to 8 p.m. in Karnataka; 6 a.m. to 10 p.m. in Orissa and Rajasthan and 8 a.m. to 8 p.m. during Winter and 7 a.m. to 9 p.m. during summer in Delhi. They cannot be employed after 8 p.m. in West Bengal and Tripura.

5. Apprentices Rules, 1962

Section 8(2): No apprentice, other than a short term apprentice, shall be engaged in such training between the hours of 10 p.m. and 6 a.m. except with the prior approval of the Apprenticeship Adviser who also shall give his approval if he is satisfied that it is in the interest of the training of the apprentice or the public interest.

## INTERNATIONAL ORGANISATIONS

The United Nations declaration of the rights of the child on November 20, 1959 lays down that the child shall enjoy special protection and shall be given opportunities and facilities by law and by other means to enable thim to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interest of the child shall be the paramount consideration.

The children's charter stipulates that for every child a community which recognises

and plans for his needs protects him against physical dangers, moral hazards and diseases, provides him with safe and wholesome places for play and recreation and makes provision for his cultural and social needs.

#### PROVISIONS IN ILO

In the interest of the working children all over the world, the International Labour Organisation has adopted 18 conventions as follows:

- 1. \*Minimum Age (Industry) Convention (No. 5), 1919.
- 2. Minimum Age (Sea) Convention (No. 7), 1920.
- 3. Minimum Age (Agriculture) Convention (No. 10), 1921.
- 4. \*Minimum Age (Trimmers and Stockers) Convention (No. 15), 1921.
- 5. Minimum Age (non-Industrial Employment) Convention (No. 33), 1932,
- 6. Minimum Age (Sea) Convention (Revised) (No. 58), 1936.
- 7. Minimum Age (Industry) Convention (Revised) (No. 59), 1937.
- 8. Minimum Age (Non-Industrial Employment) Convention (Revised) (No. 60), 1937,
- 9. \*Minimum Age (Underground Work) Convention (No. 123), 1973.
- 10. Minimum Age Convention (No. 138), 1973.
- 11. \*Medical Examination of Young persons (Sea) Convention (No. 16), 1921.
- 12. Medical Examination (Sea farers) Convention (No. 73), 1946.
- 13. Medical Examination of Young Persons (Industry) Convention (No. 77), 1946.
- Medical Examination of Young Persons (Non-Industrial Occupations) Convention (No. 78), 1946.
- Medical Examination of Young Persons (Underground Work) Convention (No. 124), 1965.
- 16. \*Night Work of Young Persons (Industry) Convention (No. 6), 1919.
- Night Work of Young Persons (Non-Industrial Occupations) Convention (No. 79), 1946.
- 18. \*Night Work of Young Persons (Industry) Convention (Revised) (No. 90), 1948.

The Government of India have ratified 6 of the 18 conventions adopted by the ILO for children and young persons. Following are the 6 conventions which have been ratified and implemented in the country:

- 1. Minimum Age (Industry) Convention (No. 5) 1919.
- 2. Minimum Age (Trimmers and Stockers) Convention (No. 15) 1921.
- 3. Minimum Age (Underground work) Convention (No. 123) 1973.
- 4. Medical Examination of Young Persons (Sea) Convention (No. 16) 1921.
- 5. Night work of Young Persons (Industry) Convention (No. 6) 1919.
- 6. Night Work of Young Persons (Industry) Convention (Revised No. 9), 1948.

One of the most important conventions is the Minimum Age Convention 1973 which prescribed the minimum age as not less than 15 years for developed countries and 14 years for initial fixation by developing countries. For hazardous occupations, the minimum age fixed is 18. Fixing of minimum age for admission to employment needs to be preceded by creation of a suitable enforcement machinery. To set up such a machinery, particularly for the unorganised sectors in agriculture, cottage and heavy industries, small scale industries, etc., becomes a difficult task in a developing country.

A Resolution was adopted in the International Labour Conference in its 65th Session in

1979 in the International Year of Child for the protection and elimination of child labour and for the transitional measures to be adopted by the countries (Please see next page).

Notwithstanding the constitutional provisions, Acts and legislations and documentary disapprovals, child labour is an empirical reality present in differential degree in almost all the sectors of our national economy, organised or unorganised, regulated or unregulated.

The National Commission on Labour has observed in its report that the employment of children is more of an economic problem than anything else. The Commission felt that the denial of opportunity to children for their proper physical development and for education is a serious issue keeping in view the larger interest of the society. The Commission has recommended that it is necessary to give the child education in his formative years and this can be ensured by fixing the employment hours of children so as to enable them to attend school. The Commission has also recommended that where the number of children is adequate, the employers, with the assistance of the State Governments, should make arrangements to combine work with education.

The VI Plan aims at universal primary education, increase in employment opportunities and improvement in family incomes. It is hoped that children will thus gradually be weaned away from work and sent to school.

## COMMITTEE ON CHILD LABOUR

With a view to studying the problems of child labour and to suggest suitable measures for their protection and welfare, the Ministry of Labour, Government of India, has set up a Committee, in its Resolution dated 6/7th February, 1979. The following are the terms of reference of the Committee:

(i) Examine existing laws, their adequacy and implementation, and suggest corrective action to be taken to improve implementation and to remedy defects.

(ii) Examine the dimensions of child labour, the occupations in which children are employed, etc., and suggest new areas where laws abolishing/regulating the employment of children can be introduced.

(iii) Suggest welfare measures, training and other facilities which would be introduced to benefit children in employment.

The Committee has drawn up a plan of action for making an in-depth and diagnostic study on the nature and extent of the problem, adequacy of existing legal framework and the supportive measures. The Committee will be taking up case studies in different blocks in about eight selected states to study the rural conditions and right also be doing sectoral studies in the organised and unorganised sectors where the incidence of child labour is quite high. The Committee has also brought out a questionnaire to elicit information on child labour from the public, the politicians, trade unions, social welfare and other institutions, employers, parents of children and Government organisations. The information received from the questionnaire will be tabulated and utilised in the report of the Committee.

The Committee on Child Labour is expected to make recommendations, *inter alia*, on the following main issues:

- (i) prescribing a uniform minimum age for employment of children under all the Acts,
- (ii) identifying hazardous occupations and banning the employment of children in such occupations.
- (iii) recommending laws, rules, regulations, Acts and legislations for protecting children in employment and for progressive elimination of child labour, and
- (iv) suggesting labour welfare and social welfare measures to protect the working children from exploitation and suitable machinery for enforcement and implementation of provisions adopted for welfare of working children.

A child labour cell has been set up to formulate, coordinate and to implement policies and programmes for the welfare of child labour. At present the cell is assisting the Committee on Child Labour. It is expected to take follow up action on the recommendations of the Committee on Child Labour.

#### RESOLUTION

concerning the International Year of the Child and the Progressive Elimination of Child Labour & Transitional Measures adopted by the International Labour Conference in its sixty-fifth Session (1979) at Geneva.

The General Conference of the International Labour Organisation,

Recalling resolution 31/169 adopted by the United Nations General Assembly, proclaiming 1979 as the International Year of the Child, with the general objectives of promoting the well-being of children, drawing attention to their special needs and encouraging national action on behalf of children, particularly for the least privileged and those who are at work,

Noting the activities that were undertaken at the national, regional and international levels in preparation for the International Year of the Child and the progress made since.

Convinced that the International Year of the Child provides for all member States an opportunity to review their economic and social policies concerning child welfare and to formulate guidelines in this sphere,

Considering that a new and fair international economic order would greatly contribute towards genuine economic and social development, primarily of benefit to children,

Recalling the endorsement by the 1LO of the aims of the International Year of the Child and its pledge to make every effort and lend all support to member States for their earliest possible fulfilment,

Recalling the United Declaration of the Rights of the Child, 1959, and particularly Principle 9, which stipulates that the child should be protected against all forms of neglect, cruelty and exploitation; that he should not be admitted to employment before an appropriate minimum age; and that he should in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development,

Considering that since its foundation the International Labour Organisation has sought to eliminate child labour and to provide protection for children.

Noting with approval the Director-General's Declaration on the International Year of the Child,

Deeply concerned that child labour still remains widespread in many parts of the world and that working children frequently work under conditions including those of exploitation detrimental to their health and welfare,

Recognising the need to ensure that the health and strength and the tender age of children are not abused and that children are not permitted to enter avocations unsuited to their age or strength,

Considering that the International Year of the Child should be an occasion to reaffirm with practical measures and deeds that the well-being of today's children is the concern of all people everywhere,

Recalling the decision of the Governing Body of the International Labour Office, taken at its 208th Session (November 1978), to request the Member States to supply a report in 1980 under Article 19 of the Constitution on the extent to which effect has been given or is proposed to be given to the Minimum Age Convention (No. 138) and Recommendation (No. 146) of 1973;

1. Calls upon member States to strengthen their effort for the elimination of child labour

and for the protection of children, and in this context -

- (a) to implement the provisions of the Minimum Age Convention, 1973 (No. 138), and, where they not already done so, to ratify this Convention as early as practicable;
- (b) to ensure in particular full recognition of the principle that any work undertaken by children who have not completed their compulsory education shall not be such as would prejudice their education or development;
- (c) to apply the Minimum Age Recommendation, 1973 (No. 146), and the Minimum Age (Underground Work) Recommendation, 1965 (No. 124);
- (d) to report in detail in 1980 under the procedure of Article 19 of the Constitution on the progress reached in the implementation of the Minimum Age Convention (No. 138) and Recommendation (No. 146), 1973;
- (e) pending the elimination of child labour, to take all necessary social and legislative action for the progressive elimination of child labour and, during the transitional period until the elimination of child labour, to regulate and humanise it and to give particular attention to the implementation of special standards of children relating to medical examination, night work, underground work, working hours, weekly rest, paid annual leave and certain types of hazardous and dangerous work embodied in a number of ILO instruments;
- (f) to make every effort to extend the provisions of appropriate educational facilities, in order fully to apply compulsory education and to introduce it where it does not exist and, where education is compulsory, to make it effective;
- (g) to ensure that appropriate protective labour legislation applies to all children at work in the sectors of activity in which they are employed;
- (h) to ensure that special attention is given to the provision of fair remuneration and to its protection for the benefit of the child;
- (i) to strengthen, where appropriate, labour inspection and to undertake all other measures conducive to the elimination of child labour;
- (j) (i) to identify the special needs of children to strengthen efforts to improve the general economic and social well-being of the family, and to launch a national campaign aimed at creating awareness among the general public of the adverse effects of child labour on his/her development;
  - (ii) to develop international solidarity and cooperation with the developing countries and to activate efforts to establish a new and fair international economic order so as to respond more effectively to the basic measures undertaken by each State for better child protection.
- 2. Calls upon governments and employers' and workers' organisations to assess the situation of child work and to assist the competent bodies and the ILO to strengthen their action programme for children.
- 3. Invites the Governing Body of the International Labour Office to instruct the Director-General to continue and reinforce the ILO's action through such means as factual surveys of national situations and practices for the elimination of child labour and for the protection of children at work, and to make the necessary preparations for a global revision of the relevant ILO instruments.

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State! Union Territory	Cultiva- tors	Agricul- tural labourers	Livestock, forestry. etc.	Mining and quarrying	Manufac- turing processing services & repairs	Construc-	Trade and commerce	Transport, storage and	Other Services
					including household industry			cations	
(1)	(2)	(3)	(4)	(3)	(9)	(7)	(8)	(6)	(10)
Andhra Pradesh	342,618	811,703	245,520	5,605	108,818	13,042	35,300	4,849	59,037
Assam	154,347	39,097	14,361	146	4,479	524	6,346	486	18,794
Bihar	321,004	609,271	53,990	3,169	30,924	1,438	12,863	2,231	24,469
Gujarat	213,979	232,176	21,108	1,600	10,413	3,436	12,063	1,627	10,259
Haryana	67,551	39,558	14,472	309	7,019	1,317	2,443	206	4,651
Himachal Pradesh	59,914	4,003	4,249	44	913	464	467	123	1,207
Jammu & Kashmir	52,760	2,569	6,492	40	5,105	462	818	196	1,250
Kerala	4,925	15,557	13,214	272	27,902	514	4,252	1,237	29,116
Madhya Pradesh	475,990	488,302	70,857	1,470	44,126	3,341	9,408	1,473	17,352
Maharashtra	281,113	550,504	55,298	1,508	43,458	6,636	22,900	2,972	23,968
Manipur	14,230	383	31		1,563	15	115	7	36
Meghalaya	22,964	3,843	2,260	63	239	20	184	08	757
Karnataka	196,357	331,604	113,402	2,458	65,716	9,654	19,045	7,149	29,014
Nagaland	13,309	154	25	<b>+</b>	29	17	84	6	86
Orissa	153,400	230,880	42,704	1,108	19,363	029	68869	1,119	36,374
Punjab	107,563	83,175	151,013	32	14,244	1,132	5,211	924	5,390
Rajasthan	348,692	92,411	97,025	1,607	20,760	3,123	5,998	1,525	16,248
Sikkim	14,660	503	100	<del></del>	36	34	55	51	221
Tamil Nadu	154,155	335,806	62,029	2,205	62,703	6,885	3,275	4,193	21,402
Tripura	9,315	5,988	431	1	295	43	501	63	854
Uttar Pradesh	677,874	451,485	20,376	479	91,275	3,511	20,163	6,228	54,735

42,933	322 476 66	5,053 88 1,405 13 346
2,680	17	339 15 156 16
18,929 63	46 170 10	2,513 67 591 2 373
1,904	6 102 37	782 39 432 8 8
33,458	21 211 36	7,264 1,199 462 66 452
698		11 42 1
30,436 129	32 9 138	154 66 1,184 8 670
237,291 105	553 37 883	544 491 1,518 - 1,694
143,114 Nicobar 80		357 298 2 Diu 1,216 mds — 88
West Bengal Andaman and Nicob Islands	Arunachal Pradesl Chandigarh Dadra & Nagar Haveli	Delhi Goa, Daman & Diu L.M. & A. Islands Pondicherry

SOURCE: Census of India, 1971.

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NUMBER OF CHILD WORKERS IN STATES/UNION TERRITORIES IN 1971

SI. No	States/Union Territories	Total child workers (in thousand)	Per cent of child workers to total population	Per cent of child workers to total workers	Per cent of child workers to total children
(1)	(2)	(3)	(4)	(5)	(6)
Ind	ia	10,738	1.96	5.95	4.66
0					
Sta		1.627	2 74	0.02	0.00
1.	Andhra Pradesh	1,627	3.74	9.03	9.23
2.	Assam	239	1.60	5.64	3.40
3.	Bihar	1,059	1.88	6.06	4.41
4.		518	1.94	6.17	4.50
5.	Haryana	138	1.37	5.20	2.95
6.	Himachal Pradesh	71	2.05	5.55	4.97
7.	Jammu & Kashmir	70	1.52	5.09	3.53
8.	Karnataka	809	2.76	7.94	6.50
9.	Kerala	112	0.52	1.80	1.30
10.	Madhya Pradesh	1,112	2.67	7.27	6.10
11.	Maharashtra	988	1.96	5.37	4.74
12.	Manipur	16	1.49	4.31	3.50
13.	Meghalaya	30	2.96	6.71	6.80
14.	Nagaland	14	2.71	5.34	7.14
15.	Orissa	492	2.24	7.18	5.29
16.	Punjab	233	1.72	5.95	4.16
17.	Rajasthan	587	2.28	7.29	4.01
18.	Tamil Nadu	713	1.73	4.84	4.58
19.	Tripura	17	1.09	3.94	2.47
20.	Uttar Pradesh	1,327	1.50	4.85	3.58
21.	West Bengal	511	1.15	4.13	2.68
Uni.	on Territories				
22.	Andaman and Nicobar Islands	1	0.87	2.17	2.27
23.	Arunachal Pradesh	18	3.85	6.67	10.05
24,	Chandigarh	1	0.39	1.16	1.12
25.	Dadra and Nagar Haveli	13	4.05	8.57	11.76
26.	Delhi	17	0.42	1.38	1.08
27.	Goa Daman and Diu	7	0.82	2.57	2.14
28.	Lakshadweep			,	#.1 <del>11</del>
29.	Pondicherry	4	0.85	2.84	2.15

Source: Census of India, 1971, series 1—India Paper 3 of 1972—ECONOMIC Characteristics of Population, Registrar General and Census Commissioner of India, New Delhi, 1973, pp. 2-71.

# Seminar on Children's Services in the 'Eighties Possibilities and Challenges

A seminar on 'Children's Services in the 'Eighties: Possibilities and Challenges' sponsored by the Department of Social Welfare, Government of India, was held at the Tata Institute of Social Sciences (TISS), Bombay, on June 11-14, 1979. It was inaugurated by Mrs. Shanti Sadiq Ali, President of Bal Varsh Prathishthan, Bombay.

The objectives of the seminar were:

- (a) to identify the priority needs of children for the next ten years and the services required to meet them.
- (b) to identify the organisational structures required in such services.
- (c) to identify the manpower and training requirements at various levels.
- (d) to identify the shifts in policy required, and
- (e) to review the existing policy and organisational structure in the light of (a, b, c) and(d) above.

The following working papers were prepared for the seminar:

	Title*	Author	
1.	Priority Needs of Children in the 'Eighties	Meenakshi J. Apte	
2.	Overview of Children Acts	J.J. Panakal	
3.	Organisational Structures Required to Meet Children's Needs in the 'Eighties	Neera Kukreja Sohoni	
4.	Manpower and Training Requirements for Children's	Mandakini Khandekar	
	Services in the 'Eighties		
5.	Shifts Necessary in Policies and Organisation	P.D. Kulkarni	

The author of working paper 3 is the programme executive of the Indian Council of Social Welfare, Bombay, and that of working paper 5, a visiting professor at the TISS. The others are on the TISS faculty. The working papers provided a framework for discussions during the seminar. A session was devoted to each of the working papers.

Representatives of the State Governments were requested to prepare background papers incorporating up-to-date information on children's services and organisational structure in their States. Papers were received from the following States and Union Territories: Andaman & Nicobar, Andhra Pradesh, Assam, Bihar, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Nagaland, Punjab, Tamil Nadu, Tripura and West Bengal.

The seminar was conducted in eight sessions. Besides inaugural and valedictory sessions, there were six working sessions, of which, five were devoted to discussion of the five working papers. In the sixth, the preliminary report on the seminar was discussed. Dr. M.S. Gore, Director, Tata Institute of Social Sciences, chaired the inaugural and reporting sessions. For other sessions, six senior participants were requested to be the chairmen.

\*The first four papers have been published in this volume and a summary of the fifth is given in this 'document'.

### INAUGURATION

In her inaugural address, Mrs. Shanti Sadiq Ali gave expression to her views on approaches to planning for children in the 'Eighties. She found that children's "functional needs continued to be structurally compartmentalised." Besides integrated services she favoured planning community development "in such a way that the family's potential to meet these needs is increased and dependence on the state decreased." She noticed the new trend in social welfare services to move away from remedial and institutional approach and stressed the inevitable shifts to preventive, developmental and non-institutional programmes.

Mrs. Sadiq Ali went on to ask the question "..., if we can develop a public distribution system for commodities, what prevents us from developing an effective delivery of services for those who are, as stated officially, 'the nation's supremely important asset?' She pleaded for setting up a watch-dog committee not only to monitor programmes but also to eradicate "bureaucratic approaches from social welfare management."

## WORKING PAPER ONE

Mr. Narendra Bihari Lal, Secretary, Harijan and Samaj Kalyan Vibhag, Government of Uttar Pradesh, chaired this session. Mrs. Meenakshi Apte presented her working paper entitled 'Priority Needs of Children in the 'Eighties'.\* A record of the discussion on it follows.

The participants touched upon the following aspects.

- 1. Criteria for setting priorities of needs
- 2. Priorities
- 3. Services and integration of services
- 4. Resources for meeting needs
- 5. Strategies for delivery of services
- 6. Lack of statistics

Criteria for Setting Priorities: A participant urged that it was necessary to suggest criteria for setting priorities of needs before priorities could be listed. This could be done in two stages: first identify beneficiary groups in order of their need for children's services and then set the priorities. For the first task three criteria were mentioned: (a) regions, (b) sectors of population, and (c) groups within sectors.

This line of thinking was pursued for some time at the end of which many participants agreed that region-wise, rural and tribal areas should be given preference while starting or, expanding children's services. In regard to criterion (b) above, the deprived sections, alternatively termed as economically weaker sections should be given the highest prioritiy. Detailing the composition of these groups the following were listed: the scheduled castes; the scheduled tribes, especially the nomads among the latter, many of whom remain unlisted even in our censuses; the handicapped; and the migrants, especially unorganised labour. A few participants added orphans and children in broken families to the list. Criterion (c) is only an elaboration of the earlier criterion and as an example of smaller groups within a larger sector, the urban poor and slum-dwellers were mentioned by a few participants who had obviously noted the growing trend towards urbanisation mentioned by Mrs. Apte in her working paper.

A couple of participants wanted to add another criterion to the above three, that of age group. They suggested that services for children in the age-group 0-6 should be given priority over those for older children. However, there were an equal number of other participants who disputed the suggestion. According to them the formative years of children

extend much beyond the pre-school stage: giving priorities to only pre-school years often leads to a neglect of services for school-age children with the consequent lack of balanced growth of children. They wanted that priority should be given to children in the age group 0-12 years. The debate on the criterion of age group remained inconclusive.

Priorities: Detailed servicewise priorities were not listed, though health, nutrition, education, safe drinking water and family planning were mentioned by different participants. Many laid stress on a 'package of services.' This term was heard very often. Even so, health services, together with nutrition, were considered to be the single most important item. Providing basic requirements for the very survival, viz., food, and ensuring a healthy climate for growth, was mentioned again and again. Children's health needs were important and as a result, health services needed to be strengthened. Some participants included pre-school and primary education in the package.

The integrated child development services (ICDS) which follow a package-based approach were recommended for rapid expansion in the 'Eighties so as to cover more and more areas. The role of State Governments ought to be more vigorous in this field, said many. They pointed out that this programme had proved to be quite effective. It should, however, be linked with the concerned departments of State Governments. Proper coordination between them was emphasised.

Much stress was laid on the need to have a strong family planning programme. It was included in the package of services.

The conclusion which could be drawn from this part of the discussion is that the participants did not wish to accord priority to any one particular service over the others and that they were in favour of a package of services.

Even so, it may be added that the 'prioritisation' exercise remained incomplete in the end. For example, though the handicapped were identified as those who required services on a priority basis, their needs were not voiced. Also, the needs of tribal children were not considered in sufficient detail. This is partly understandable because a number of topics were taken up for which available discussion time was inadequate.

Services and Their Integration: Having agreed that a package of services was to be opted for rather than individual services, the participants expressed their views concerning various services. T hey are given below. Each was made by a couple of participants. Not much discussion took place on them.

- Education for nutrition is as important as providing nutrition through different feeding programmes. It is also a means of making an essentially costly programme less costly. Here, non-formal methods of community education should be followed. More funds should be invested in nutrition education programme.
- Nutrition is a basic need of children. The institutes of catering should prepare new recipes for introducing in local communities. They would be of use to nutrition education programmes.
- Minimum health services should be provided. Every child should have a regular health checkup at least twice a year.
- 4. Provision of good drinking water is essential. Agencies like the UNICEF and the CARE should make their resources available to the States. Safe drinking water was still a scarce commodity in villages.
- 5. Both pre-primary and primary education should be strengthened.
- Pre-primary education should be a responsibility of the State. It should be integrated with primary education.
- The departments of social welfare in State Governments would have a role to play in the field of education. Welfare programmes should be linked with preschool and primary education.
- Education should be made a reality for children. This would help them in increasing the rate of retention of children in schools.

- 9. Those who discontinue school after primary level, should be given non-formal education.
- 10. More and more welfare programmes, such as creches for children, could be coordinated with preschool education.
- 11. Moral and ethical aspects of development should be considered while planning educational curricula.
- 12. Vocational training programmes should be continued. The employers should be made responsible for the progress of apprentices they select.
- 13. Women's literacy programmes are important and should include health and nutrition as well. Women's education is important not only for its own sake but also for raising health and nutrition levels in the community.
- 14. Our nation cannot do without a large-scale family planning programme for an overall development. It can be considered as one of the services for children. Strong disincentives should be introduced to reduce the growing population.
- 15. A much-reduced population would ensure minimum services for all.

Though the ineffectiveness of the statutory provisions was commented upon, not much time was devoted to a discussion of socio-economic reasons for the situation as it exists today. Similarly, integrated approach to services was recommended by almost all the participants. However, its implications, save for coordinated inter-departmental action, were not discussed in sufficient detail.

Implementation of Services: The stress, in broad and general terms, on the integrated approach, served as the take-off point for a discussion on factors which should be kept in mind while planning and implementing children's services. Three items were considered: (a) resources, (b) strategies for meeting needs, and (c) statistics.

Resources: Availability of resources, their mobilisation and allocation, were discussed at various points during the seminar. The fact was noted that governmental resources for social welfare in general were limited. And, in all probability they would remain so in the 'Eighties as well. Given this reality, it was necessary to, first, make the maximum possible use of such resources, and secondly, to mobilise community resources to a larger extent, There was general agreement on these propositions. Some participants suggested that such beneficiaries as had the capacity to pay should be charged for services rendered to them. All government services, in their opinion, need not be offered free of charge to everybody.

Some participants pointed out that State Governments were not always in a position to devote sufficient amount of money to children's services. They should be helped by the Central Government; more finances than at present should flow from the Centre to the States. In the opinion of some, such Central assistance could be instrumental in reducing inter-State inequalities in the availability of children's services.

A few participants pointed out that some intra-State resource mobilisation could be done by the State Governments themselves. Departments such as agriculture, irrigation and power too could reserve a part of their plan allocations for child welfare programmes. Some participants wanted the State Governments to be alert to intra-State variations and to reduce them as much as possible.

Strategies for Meeting Needs: Questions on strategies were raised in the light of discussion on resources. A few participants came out with the suggestion that in view of the limited resources, either the number of services be restricted or their coverage be limited. Rather that follow such a course which would go against many children in need of services, pleaded some other participants, it would be much more desirable to encourage voluntary agencies to go to rural areas where the need for services was the greatest. At present, most of the voluntary agencies were engaged in rural areas to a limited extent.

Some participants argued in favour of involving the local community in providing services to children since resources were limited. It should be considered as a strategy. Education of parents, especially for good nutrition, with available and local food items was mentioned as an example.

Another strategy to strengthen children's services would be to train personnel in providing services. Given the resource constraints it was necessary to use it to the maximum. Trained staff would be better able to do it. Trained staff was needed for another reason: inadequate number of voluntary workers. Trained manpower could be taken as a resource for enlarging the scope of services, according to some.

Remarks concerning voluntary agencies and their inadequacies evoked sharp comments from representatives of voluntary organisations who pointed out that official grants to them were not administered efficiently with the consequence that their working was adversely affected. They wanted a better understanding of their problems. They pointed out that they provided many services not given by official agencies.

Some participants pleaded for a better coordination of work done by both official and voluntary agencies.

Lack of Statistics: Lack of adequate statistics on both children's situation and services for them was mentioned. More and better statistics were required on content and coverage of services if more efficient planning was required for programmes in the future.

As an example of requisite detailed data, one participant mentioned the minimum expenditure required for each of the children's services. Such computations would help planners and administrators to realistically assess the situation as regards services.

Some other participants pointed out that not enough was known about the situations in which handicapped children lived and grew up. Surveys could be organised to obtain Statewise data on them. Similarly, studies could be conducted on social change and its impact on children.

The chairman, Mr. N.B. Lal, summed up the session's discussions on various points and said that it was essential to draw up a blue print for children's services in the 'Eighties. His suggestion was that the government should appoint a working group to prepare such a blue print which would provide a package of minimum services in an integrated manner, especially to the deprived sections of population.

### WORKING PAPER TWO

Mr. P.V. Bhatt, Secretary, Labour, Social Welfare and Tribal Development Department, Government of Gujarat, was requested to be the chairman for the session. Prof. J.J. Panakal presented his paper entitled 'Overview of Children's Acts.'\*

To begin with, some participants representing their State Governments explained the working of their State Children's Acts. These threw up the following points for discussion.

Definition of 'Child': A number of participants fully endorsed Prof. Panakal's suggestion that there should be a uniform definition of 'child' throughout the country. One participant said that in his State a boy was considered to be a child upto 16 and a girl upto 18. He recommended a similar sex-wise differentiation in the uniform definition as well. Another participant said that both boys and girls were children up to 16 in his State.

Though they wanted a uniform definition, the participants did not take upon themselves the task of making a definite recommendation.

Special Juvenile Courts: There was general unanimity on the need to set up special juvenile courts in adequate number. The consensus was so strong that there was hardly any debate on the point. Everybody agreed that full-time or part-time juvenile courts would help in speedy disposal of cases. It was emphasised that the judicial magistrates for these courts should be adequately trained for their jobs.

Acts Concerning Institutions: A number of participants agreed with Prof. Panakal that the Central Acts—the Women's and Children's Institutions (Licensing) Act and the Orphanages

<sup>\*</sup>The paper is published in this volume.

and Other Charitable Homes (Supervision and Control) Act, were not properly implemented in the country. One participant wanted the Licensing Act to be extended to creches, maternity homes, balwadis, ashram schools, etc.

The participant from Kerala explained the working of Orphanages Act in his State and suggested that similar Acts be put on the statute book in all the States. Boards of control could be set up under these Acts in all the States to prevent exploitation of children. This suggestion was made by Prof. Panakal as well and most of the participants agreed stressing the need to control the growth of bogus or ill-managed institutions for women and children.

After-care Services: A few participants expressed the view that once the period of commitment was over, children were let out to fend for themselves. One of them suggested that after care services should form part of the Children Act itself so that a child could have some security after his release from an institution. Another said a child was often branded as a 'jail-bird' in the absence of facilities which could be offered to him after his release.

Yet another participant pointed out that in his State an institutionalised child rarely suffered as an 'out-caste' after his (the child's) release and that the child was given opportunities to mix with others in social and cultural gatherings. However, this participant too felt that much preliminary work was necessary even before a child's release, especially, on license.

In the end, there was general agreement that after care services should be made an integral part of Children's Acts.

Non-institutional Services: One participant recommended that the pros and cons of the Adoption Bill be considered during the seminar. He himself was in favour of a speedy passage for the Bill in Parliament. Another pointed out that the Bill deserved favourable consideration as it could be an instrument for protecting the interests of a child given in adoption. The present Guardians and Wards Act did not provide much security to an adopted child.

Many participants were strongly against foreigners adopting Indian children and said that such adoptions be discouraged. One of them said that Indian children adopted by foreigners and who grew up in a foreign climate could face problems in their education, employment and marriage.

One participant expressed the opinion that if foster care and adoption were to be used for children in institutions under the Children Acts, the Acts should be modified suitably. Else, these two non-institutional services might not be effective for the children concerned.

This prompted another participant to say that these two services could be used not only for delinquent children but for destitute children too, as a non-institutional approach was better suited to child welfare services in a country like India where poverty was the most important problem. This view was endorsed by many participants and it was again suggested that the Adoption Bill should be passed as early as possible.

A few participants, however, cautioned against a hasty decision in the matter and said that if the Bill has been pending for a long time, there must be some reason behind it. The viewpoints of the minorities should be kept in mind while passing the Bill.

Welfare Scheme for Destitute Children: One participant observed that destitute children were admitted to institutions under the Children Acts and also to institutions set up under the new welfare scheme for destitute children. The latter institutions received larger grants than those given to fit person institutions. Since the difference between a delinquent child and a destitute child was only a neglibile difference in the Indian context and since destitute children outnumbered the delinquent in the Children Act institutions, argued this participant, grants under the new welfare scheme should be made available to institutions under the Children Acts as well. Another participant supported this view by adding that problems of destitute children in the Children Acts institutions were more genuine than of those admitted to institutions under the new scheme.

Yet another participant took a somewhat different stand in view of the research findings

that nearly 75 per cent of children in the Children Acts institutions were destitute and not delinquent. She wanted these destitute children to be taken out of the purview of the Act under which they came to be treated, in reality, along with delinquent children. If necessary, the Children Acts could be so amended that they concerned themselves with only delinquent and uncontrollable children. The destitute children could be looked after under the new welfare scheme meant for them. The scope of the Children Acts could be narrowed to that extent and that of the newer scheme expanded.

Though different participants linked the Children Acts with the newer welfare scheme, there was no overall review of services under both the acts and the scheme.

# General Comments

- The Children Acts to be more broad based than at present so as to cover all aspects
  of child care. The widely accepted integrated approach to child welfare should be
  incorporated in them.
- Social legislation should be viewed in the light of social development in the country.
   A large child population would be an impediment to the success of social legislation.

   Poverty is the crux of the problem of child welfare.
- 3. Instead of children's courts there should be family courts. Children should not be seen in isolation from their families.
- 4. There should be a comprehensive review of all the acts concerning children.

Suggestions: In the end, the chairman, Mr. P.V. Bhatt summarised the discussion and listed the following suggestions which reflected the views of the majority of participants.

- 1. The Government of India should take initiative in having a uniform definition of 'child' all over the country.
- Special juvenile courts should be set up to deal with children brought before them
  and specially trained judicial personnel should be entrusted with the work.
- 3. Aftercare services should form a part of children acts.
- 4. The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960 should be implemented throughout the country. Boards of control provided for under it should be set up in all the States in the 'Eighties.
- The Adoption Bill which is pending before Parliament for a long time should be passed early.

## WORKING PAPER THREE

Mr. T.N. Chaturvedi, Director, Indian Institute of Public Administration, New Delhi, was requested to be the chairman for this session. Mrs. Neera K. Sohoni's paper on 'Organisational Structures Required to Meet Children's Needs in the 'Eighties', was read out for her in her absence.\*

The chairman opened the discussion by commenting on the appropriateness of a debate on organisational structures after a review of children's needs and legal aspects. He highlighted the point made in the paper that there was a lack of policy perspective. To him the proposition that our policies were good but that their implementation was inadequate, was untenable. If our organisational structures were inadequate for the tasks meant for them, he argued, the policy makers should take this fact into consideration. A policy should take into account: (i) the political will, (ii) the climate of public opinion, (iii) administrative indifference, if any (iv) resistance by vested interests, and (v) importance of evaluation and feedback.

In his opinion, the major problems in child welfare today, were: (a) unrealistic planning—

<sup>\*</sup>The paper appears in this volume.

*i.e.*, planning which was not need based, (b) inadequate machinery for planning, (c) lack of wide-ranging delivery network, (d) inefficient feedback, and (e) lack of community participation.

A number of participants took the opportunity to describe what was being done in their States and how. Later on, the discussion centred on the following points: (1) role of voluntary agencies, (2) organisational structures, (3) administrative procedures, (4) personnel, and (5) training.

Role of Voluntary Organisations: One participant expressed his view that work done by voluntary agencies needs to be supervised by the government. There was much overlap in their functions while it was necessary to avoid duplication. This evoked a reply from a representative of such agencies to the effect that their work was fully open to such supervision and that it was indeed being supervised since the agencies were, by and large, registered bodies governed by the provisions of the Registration of Societies Act. Another member said that these agencies had an important role to play in the field of social welfare. Theirs was an acknowledged presence and they should be strengthened. They should also be encouraged to spread their activities especially in rural areas where much work remained to be done. Some of the national bodies such as the Family Planning Association of India, Indian Council for Child Welfare and similar other agencies should be helped to open branches in all the States.

Conceding the point made by the earlier speaker about voluntary agencies' role, another participant still wanted the nature of this role carefully assessed. He reiterated the point that this role needed to be properly defined and examined.

One participant tried to reconcile the two view points by suggesting that what was really needed was a coordination between the work done by both governmental and voluntary agencies. The two could not function efficiently without each other. Each reinforced the services provided by the other. This line of argument was approved by a few others.

The financial vulnerability of voluntary agencies was mentioned by one participant. He pointed out that most of them depended by government grants. He would like to see them self-sufficient financially and not be dependent on the government. This view point too found favour with some participants.

One participant felt that the voluntary sector was not adequately organised especially at the State level. She criticised the working of the State social welfare advisory boards inasmuch as their coverage was not extensive enough in terms of both welfare services and welfare agencies. She wanted that there should be another statutory body at the State level in each State. Its main function should be to render assistance to agencies to get themselves properly organised and to promote greater inter-agency cooperation. In this way, welfare services in the States could be developed.

A representative of welfare agencies was opposed to this suggestion and said that if there were any shortcomings in the working of social welfare advisory boards, they could be removed, but establishing statutory bodies along similar lines was no answer to the problem. A few other participants too supported this latter view point and the suggestion for new bodies did not find much favour.

According to one speaker the functioning of the State boards could be improved if the number of nominations motivated by political considerations were kept to the minimum.

The question of greater coordination between voluntary agencies was pursued further. One participant felt that in view of the fact that a number of voluntary organisations worked in the same district, and often shared a common platform, it would be desirable if they themselves could join hands and form a State level association. This association could take a comprehensive view of their welfare activities,

Organisational Structures: One participant suggested that at the national level, the National Children's Board could continue to function with the help of a bureau which could have varied functions to lay guidelines for work to be done at various levels and to coordinate such work so that good results could be achieved. The bureau could also undertake studies.

The Board could have branches in the States which could also serve as clearing houses for information. The stress should be on streamlining the functioning of both the National Board and the State boards. There are State boards even at present and their current role needs to be reviewed.

This particular suggestion did not receive much attention. Instead, many participants stressed that what was needed was the proper coordination between the Central and State Governments and between the various ministries at the national level and departments at the State level.

This line of thinking was taken a step further when it was suggested that it was necessary to have an ideal relationship at the high level between voluntary organisations such as the Indian Council for Child Welfare, official agencies like the Department of Social Welfare, the Planning Commission and the National Children's Board. At this level, decisions could be taken regarding work to be done, financial allocations, improved managerial inputs, etc.

This was one more occasion for a couple of participants to renew their suggestion that the organisation of voluntary agencies be strengthened. Prior to it, their organisational structures as at present could be reviewed.

The recommendation of another speaker was that though it was necessary to have good coordination between various departments in order to reduce compartmentalisation, it was desirable that each department be given the responsibility for specific tasks and programmes. For example, the Labour Department should be asked to set up a bureau to safeguard the interests of working children, the Public Works Department should open creches for children of construction workers and so on. Each department should first outline its work programme and then quantify it. And then all their work could be brought under one umbrella.

One participant tried to orient the discussion to the challenges which organisations would have to meet if they had to be properly geared to meeting children's needs in the future. Reviews were necessary but what was needed was the desire to learn lessons from past experiences. Another thing, present structures could not be demolished altogether. He favoured an approach which would preserve what was good in the current structures and bring in changes that would prove fruitful. More programmes were needed for specific groups not served adequately at present.

Yet another participant came out with a suggestion for effecting an administrative arrangement along the lines indicated below.

- (i) District councils which could:
  - (a) plan programmes at the district level on a broad spectrum basis,
  - (b) recommend opening new institutions,
  - (c) supervise voluntary agencies, and
  - (d) give publicity to programmes;
- (ii) a coordinating committee at the regional level to coordinate the work of district councils; and
- (iii) a committee at the State level to plan and control all work in the State and to pool resources available in the State.

However, this can, at best, be called as one viewpoint rather than a recommendation. For, it was pointed out that this plan made no provision for supervision of work at village level. The remedy, according to another participant, would be to have a functionary between the village and the block levels. He could look after a cluster of villages. A third participant intervened to say that such a functionary was not really required and the suggestion would only lead to a cluttering of the system.

One participant was not in favour of having State children's boards which could be entrusted with the work of organising children's services. He rather would have a commissioner for children's services, along the lines of commissioners for tribal development as at present,

The suggestion to have a State level planning committee was endorsed by another participant who wanted the committee's role so expanded as to be able to pool the resources of voluntary agencies so as to constitute a common fund for all the programmes.

At this point one participant representing a State Government said that in his State there were district planning and development councils (DPDCs) which prepare the district levels plans. According to him they should take greater interest in social welfare. Also that similar DPDCs should be started in other States as well. To be effective, the DPDCs needed to be strengthened financially.

It was stressed that panchayati raj institutions would be very useful in motivating the community to participate in child welfare programmes.

One suggestion which found much favour was that no matter what structure was adopted, it should have sufficient flexibility to cope with local requirements which would vary from State to State.

Administrative Procedures: One participant pleaded that administrative procedures should be so viewed as to promote the efficiency of the programme personnel. For example, the evaluation of an organisation should be done in a positive way. Suggestions should be constructive in nature. Statement of accounts should be seen in the proper perspective. A resilient approach to the whole matter was required.

Another emphasised that though a hierarchy was unavoidable in any programme administration, it had to be seen in functional terms. It was necessary to have not just vertical but horizontal coordination as well. Given the fact that there are more and more organisations in the overall system, the extent of horizontal coordination had to be commensurately wider. It should receive adequate emphasis.

A participant intervened to say that cost-benefit analysis of the programme would help improve their functioning and would enable administrators to review and modify organisational structures.

There was general agreement in regard to improving administrative procedures, especially those concerning grants to voluntary agencies. One of their representatives pointed out that, more often than not, they did not get grants in time. This put them into difficulties which at times assumed serious proportions leading to even closure of institutions.

*Personnel*: Before coming to the question of personnel one participant dwelt on the need to strengthen the ICDS in view of their favourable impact on children. This could be done only by having more child development project officers. One such officer was needed in each block.

It was also felt that an *anganwadi* worker had been entrusted with too many tasks which she is hard put to do during an extended working time. Considering this it was desirable to review the workload of this functionary.

While the question of organisation of children's services at different levels was being discussed, a few participants had recommended that there should be a gazetted social welfare officer at the district level to supervise the programmes in the district.

Training: This was, together with the topic of personnel, another peripheral subject touched upon during this session. While the ICDS was being talked about, a question was raised about the adequacy of training imparted to anganwadi workers. A suggestion was made that such training facilities should be assessed and improved.

A more wide-ranging suggestion was that all the functionaries at different levels should have more technical competence than at present. Even higher level officers should be oriented to methods of social welfare administration. Only then can the right type of administrative climate be created. The schools of social work could have a role to play here. They could offer their training facilities to children's services. Training would be required for officials of both government and voluntary agencies.

The chairman Mr T.N. Chaturvedi summarised the discussion and offered a few comments himself. The roles of various agencies at national, State and local levels had to be properly defined in terms of their functional responsibilities. Here the outlook should be to

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mutually reinforce the working of official and voluntary agencies. Another important consideration should be to isolate welfare programmes from political factors.

There should be allround raising of technical competence of functionaries. Those at higher levels should be exposed to programmes at the field level. They would then be more realistic and appreciative of programme needs. Adequate support should be given to programmes if they have to show result.

At present no one knows how many voluntary agencies function in the field They should be listed so that we could know about their composition, functions, organisation, etc.

The current compartmentalisation of children's services should be done away with and the role of panchayati raj and local institutions should be strengthened Voluntary agencies should be encouraged to operate in villages to a greater extent than at present.

The chairman stressed the need to have simple structures but which would be adequate for the tasks assigned to them. It was equally important to strengthen these structures with more managerial inputs. The question of norms for staffing became relevant in this context. These norms should be valid for even voluntary organisations.

The organisational functions of monitoring and evaluation were not adequately appreciated at present but they should receive greater attention. Reporting had to be brought out of its present ritualised rut. Similarly, direction was much more than mere control and supervision. Along with supervision went guidance and evaluation.

Participation was seen as an important factor. It implied that functionaries at all levels performed their duties in a conscious manner in a helpful attitudinal and behavioural climate. People's participation was vital to the success of programmes. Finally, the whole organisational hierarchy had to be firmed up with a synthesising effort.

# WORKING PAPER FOUR

Mr. R.V. Krishnan, Secretary, Labour, Employment, and Technical Education Department, Government of Andhra Pradesh, was requested to be the chairman for the session. Miss Mandakini Khandekar presented her paper 'Manpower and Training Requirements for Children's Services in the 'Eighties.\*

The discussion centred around the following points: (1) type of training, (2) content of training, (3) duration of training, (4) network of training, (5) selection of trainees, (6) training the trainers, and (7) manpower requirements.

Type of Training: A participant from a voluntary agency was of the opinion that in-service training was more important for persons engaged in field-level programmes. She then described such training which her agency provided to its staff. Her suggestion was:

For a multipurpose training, a well-developed syllabus was necessary. It should be oriented to practical work for deprived children. Those organisations which have such service programmes should be encouraged to evolve the requisite syllabus.

Another participant too declared himself to be in favour of in-service training and pointed out that personnel for such programmes as the ICDS did not get much training. How then could ICDS be made replicable? He felt that not only should it be in-service but also short-term training which should make the staff knowledgeable about the:(i) programme, (ii) area, (iii) records and reports, and (iv) evaluation. It should be very specific and explicit. Such short-term training could be given by senior officers to their juniors. His suggestion was that every programme should have a simple manual to guide the staff in its work. Very simple forms for record-keeping, feedback and self-evaluation could be evolved. Organisations which conduct training programmes should keep others informed. An area for special

<sup>\*</sup> Published in this volume.

training was rehabilitation of clients. He stressed that short-term training should be for many and long-term training for a few.

One participant pointed out that the Association of Trained Social Workers in India was concerned with various short-term para-professional courses. Taking an overall view of training he suggested that the following points be kept in mind: (i) selection of trainees, (ii) attitude formation, (iii) job-oriented training, (iv) suitable use of in-service training, say, for fresh graduates, and (v) cultivating non-formal ways of teaching. Trainees should receive substantial and not ritualistic training. In addition, he wanted that trained persons should not be transferred too often.

One participant made a plea for flexibility in training which should be skill-based and designed to change attitudes.

Though training should be imparted to functionaries at all levels, that for field-level staff was the most important. It should be specific to the different types of jobs done by different staff.

Content of Training: Training for children's services should include a study of child psychology and of social inputs in child development. A number of other participants strongly urged that the content of training be job-oriented and need-based. One of them referred to training of staff at different levels. Field level staff is often averse to training and for them simple training imparted through jargon-free courses would be useful. For the same reason their training could be short term.

One speaker pointed out that while training of balwadi teachers was biased in favour of health and nutrition, the actual work was mostly educational in nature. Training should be in consonance with the type of work for which it is meant. This view point was supported by another participant who added that while most of the trainee balsevikas had received only secondary education, their course content was very heavy.

A note of warning was sounded by one participant who cautioned against overtraining staff 'lest they are tempted to leave their jobs.'

Duration of Training: A number of participants had shown their preference for short term training. The other view point which was acceptable to most was that the duration be decided by the purpose for which it was to be given.

One participant, however, cautioned against 'short term training which did not have any long term impact'. The duration, according to him, should not be less than six months. He was supported by another participant who pointed out that short term training was not suitable because the course content was often considerable.

According to yet another participant, short term training was more suitable for higher level personnel who were already familiar with a number of things.

There thus were two schools of thought. It was, however, generally agreed that short term training was more suited for imparting information than for changing attitudes.

Network of Training: According to one participant, it was necessary to have a network of training, beginning with the national level going right down to the local. At all levels the attempt should be to pool the available resources.

Another participant stressed the need to have training all along the line. If only field level staff is trained, those higher up would not know how best to utilise them. His view was that training for just one cadre becomes dysfunctional.

According to one participant State-level training centres should immediately follow the national centres. There should be no regional centres in between, which serve a group of States. Each State has its own special problems and grouping two or more States would not serve any useful purpose.

Another participant was in favour of having a training infrastructure at all levels.

Selection of Trainees: One participant raised the question who should be trained. His own answer was train those who can be retained in the service. This would reduce wastage among those trained. Another pointed out that sending employed persons for training was difficult for a number of reasons. He recommended that inmates of women's homes could be

trained for children's services. This would also serve the purpose of rehabilitating the women concerned. Similarly, retired persons in welfare services too could be given requisite training and employed in children's services. Their experience in the wider field of social welfare could be utilised profitably.

Yet another participant suggested that where the services were meant for under-privileged classes, a search could be made for trainees from among them. There, then, would be less need to change their attitudes. This view point was supported and it was mentioned that this approach had been tried out and proved successful. Another suggestion was made in this context: while bal sevika training is a Central scheme, let the State Governments conduct the actual training programme. Trainees could, then, be selected by the State Governments.

A couple of participants wanted that even voluntary workers should be trained adequately.

Training the Trainers: The suggestion that senior staff within an agency should train their juniors found ready response from many. One participant called such senior person a 'resource person' and said that efforts be made to develop such a person. Thus the idea grew that training the trainers would be an important aspect. It was stressed that the resource person should not only be well up in theory but be one who had ample field level experience. For the trainers, the training could be in the form of seminars, workshops, orientation programmes, etc. One of the aims of such training should be to influence trainers' attitudes.

Manpower Requirements: Manpower is inadequate everywhere. To overcome the problem it is necessary to fix norms for staffing patterns for tasks which could be divided into two broad categories: (i) general administration, and (ii) operation of services. It is true that there are financial constraints, but it would be better to have certain minimum norms. Even voluntary agencies should strive to observe these norms.

This view point, put forth by one participant, was favourably commented upon by a few others. They also wanted that manpower requirements for the 'Eighties be ascertained first and training programmes be planned accordingly.

One participant cautioned that similar exercises in the past had proved unrealistic and, therefore, misleading. One study had put the requirement at 25,000 social workers every year. But the out-turn even now is barely 1,000 per year.

Assessing manpower requirements should be a prior exercise before deciding upon training patterns, according to one participant. The services should be professionalised and a cadre could be built. The content of training could be geared to knowledge about programmes, methods of giving services and organisational aspects.

General Comments: A few participants drew special attention to the dearth of training material, especially Indian material. They wanted that the deficiency be made good.

A number of participants stressed the importance of making the administrators aware of the value of training. Their attitudes needed to be changed wherever necessary.

Miss Khandekar summarised the discussion. She said that the discussion had served the purpose of bringing out the linkage between the various aspects of training. There was much agreement on making training need-based and job-oriented. Its content could be so devised that the trainees: (i) became knowledgeable, (ii) acquired requisite skills, and (iii) had the right attitudes. Organisational aspects such as duration, network for training, selection of both trainees and trainers, equipping the latter for their job, etc. could all be linked to the question of type and content of training to be imparted to personnel at different levels. In regard to manpower, points concerning norms of staffing pattern and methods of assessing the future needs were important.

#### WORKING PAPER FIVE

Prof. A.P. Barnabas, Indian Institute of Public Administration, New Delhi, was requested to be the chairman for the session. Mr. P.D. Kulkarni's paper 'Shifts Necessary

in Policies and Organisation' was read for him by Miss Khandekar in his absence. A summary of the paper is given below.

Summary of Working Paper

The following shifts were necessary; (i) from ad hocism to planned effort; (ii) from piece-meal approach to going by priorities, (iii) from soft options to hard choice; (iv) from token-ism to sizable package of minimum services; and (v) from present-oriented perspective to futuristic perspective.

The priorities be laid down in such a way that maximum returns could be gathered from all the inputs. One way of doing so is that tax-supported services should be for normal children while voluntary efforts could be devoted to services for handicapped children since it is easy to mobilise community's support for the latter. This is also the way to reconcile the conflicting situation created by applying the economic criterion and the social criterion for deciding upon priorities. This is where hard choices need to be made.

The IYC should be used to establish a widespread network of elementary but essential services for children like any other public utility. This policy will necessitate a change from ad hocism to planned effort.

The pyramid model could be tried out for children's services with models of excellence at strategic points which could influence services within their area of such influence. The pyramid model would stride evenly across the local areas, rural and urban. It could also take care of the problem of quality vs. quantity.

In recent years the shift in policy for children's services has been from mere welfare services for the handicapped and maladjusted children to development services for normal children. This 'Beyond Welfare' approach needs to be strengthened by the age-based integration of children's services.

In devising such an integrated strategy of planning and implementation, children's services will have to join hands with more established major social services like health and education. For this, it would be necessary to evolve a programme of broad-spectrum, inter-sectoral and inter-disciplinary training for personnel for children's services.

Most of the children's services are regarded as State subjects while the bulk of funding for them has come from the Union Government. Also the major thrust of initiative in developing them. So there is a strong case to place these subjects on the Concurrent List.

#### Discussion

The chairman called attention to the dilemma created by the situation in which the needs were on a very large scale but where there was a paucity of resources. A rational approach to planning in general and integration of services in particular, was required. For this purpose, the totality of needs should be considered. He then requested the participants to discuss the working paper. The discussion was under the following heads: (1) hard choices, (2) shifts in policies, (3) organisational structure, (4) integrated approach, (5) planned effort, (6) models of excellence, (7) voluntary sector, (8) concurrent jurisdiction, (9) resources, and (10) general.

Hard Choices: One participant voiced his concern over the fact that despite all the planning that had gone in child welfare so far, there still is the problem of lack of resources. So, the questions were how best to utilise the available resources and how to give a direction to child welfare programmes. He supported Mr. Kulkarni's thesis that the time had come to go in for hard choices. According to him there were two ways of looking at welfare: (i) It is an investment for maximum benefits to the society, and (ii) it is a method of helping the handicapped sections in the society. The first indicated efforts to satisfy the basic needs of all. For this purpose, the government should take up the responsibility of providing minimum services to maximum number of children in both rural and urban areas. The second objective of welfare could be achieved to a greater extent by voluntary organisations. He was keen that despite the constraints of resources, quality should not suffer. Improving the skills of

staff was needed. Also, much organised effort to mobilise public goodwill by voluntary agencies.

Another participant agreed with this criticism and said that most of the welfare services were meant for the handicapped children. "Don't leave out the underprivileged and the handicapped from social welfare—social welfare is meant for them," he added.

Another participant disagreed with Mr. Kulkarni's suggestion that tax-supported services should be for normal children and voluntary services for the handicapped. It was a retrograde suggestion, in his opinion. He felt that the responsibility of providing welfare services to the handicapped rested squarely on the government, particularly the Central Government. He wondered if the Planning Commission had understood this point. At the same time he wanted that much thinking was necessary regarding welfare services at the State level and at the micro-level, especially in terms of content and organisation of services. In his opinion, any line of thinking which is based on the dichotomy of "welfare criterion" and "economic criterion" would not yield any positive result. He described it as "self-defeating" because even the welfare services had their economic and other returns.

While reaching to this criticism yet another participant supported Mr. Kulkarni's view-point and pointed out that given a greater concern for the handicapped "we sometimes fail to realise the potential of normal children." The intention is not to neglect the handicapped. He interpreted Mr. Kulkarni's suggestion to mean that it was an effort to ensure services to both the groups of children. It was necessary to have radical remedies for a situation which has not changed for over 30 years. Ensuring public participation is difficult, more so for normal children who still needed some minimum services. At the same time, he pointed out that voluntary effort was mostly urban-based. A couple of other respondents supported these viewpoints.

Commenting on the paper as a whole, one participant favoured the view that hard choices were necessary. Also, that a policy shift was inevitable. However, he felt that the deciding factors were the widespread poverty in India and the problem of hunger. Social services had to be developed and for this a policy was needed. Children's services could be promoted along the same lines as for services for the scheduled castes and tribes. The government had to assume this responsibility until the general economic standard is raised. At present, the voluntary efforts were not adequate.

Another participant felt that the economic criteria were at the basis of the IYC programmes. He wanted that there should be policies for strengthening family.

Shifts in Policy: One participant said that a wide-ranging shift in policies for children's services was needed. It could be in the light of the subsequent policies on health, education, etc. It should consider, in specific terms, the content of package of services for different groups of children, coordination of work of the Central and the State Governments and between different ministries and departments and provision for a built-in evaluation. He felt that such a review could be done by the National Children's Board. Or, the Central Government could give the framework and the State Governments could formulate their policies. Implementation of policies is very important. For this purpose there could be an annual review.

Organisational Structure: One participant favoured setting up a secretariat for the National Children's Board. It should be properly staffed. He also favoured convergence of political will and administrative efficiency. The Parliament could be the focal point for convergence. Geographically, the micro-level approach should be adopted. Functions could be grouped more rationally and scientifically at the State-level. This approach could lead to resilience in budgeting. Norms of functioning could be set up. At the same time, there should be a more open functioning of programmes which could make their implementation more effective. Planning and evaluation expertise could be built within the organisation. There could be standing committees on monitoring and evaluation. Schools of social work too should have a role to play. The department of social welfare should be more broad-based.

The last suggestion was echoed by another participant who felt that the department of

social welfare should be fully in the picture of children's services given by other departments.

Integrated Approach: One participant advocated doing away with the departmental approach because a number of departments were involved who spent large amount on children's services. A client-oriented approach was needed.

Another participant wanted that the integrated approach to the minimum package was good. But he wanted the services to be given to all the children and not only to some of them. He, however, cautioned against attaching a stigma to the recipients of welfare services. Something would have to be done so that such a stigma is not associated with welfare services. He had seen the scheme of Antyodaya becoming vitiated on account of it.

One participant wanted the whole group to devote some time to discuss the specifics of both the minimum package and the integrated approach.

Not only was integrated approach to some services needed but coordinated policies were required because many departments were concerned with child development and child welfare services.

According to another participant integrated services were given to only children upto six years. But even older children needed such services.

Planned Effort: One participant questioned the concepts of "tokenism" and "ad hocism" as put forth by Mr. Kulkarni. According to him only the first plan was, to some extent, riddled with ad hocism. He considered it to be a more basic problem with which every system was concerned. Uneasy compromises get built into it because of many conflicting pulls. The question as to why there was tokenism and ad hocism required greater academic understanding.

Another pointed out that at least in nutrition programmes, there was no paucity of funds. The Planning Commission had made very liberal grants and there was no reason why this particular programme could not be substantial.

One participant said that the time-frame for planning services should be such that all children up to 10 years are covered. The minimum package of services should be clearly specified so that planned efforts could be initiated to deliver it to the children concerned.

According to another participant who spoke immediately after the previous one opined that it was necessary to provide a cultural foundation for children's growth so that they became dignified members of the society.

In promoting planned efforts for children's services, it would be useful to involve the social work teachers in the country. This view was expressed by one participant.

Models of Excellence: One participant criticised the idea of models of excellence put forth by Mr. Kulkarni. He feared that they would degenerate into islands of privileges and doubted if they could be replicated in adequate numbers. According to him it was a retrograde suggestion especially because it went with the other suggestion of concurrent jurisdiction for children's services. The welfare services would be in danger of fragmentation if this model was accepted. Instead, he wanted that the concept of a package of minimum services should be accepted and the programme be planned accordingly.

Another participant felt that in a big country like India it was inevitable that only a few centres could be planned as models of excellence. "Every *balwadi* could hardly be perfect." These models could give quality-improving guidance to others who could improve themselves over a period of time. Having such models is something of a compromise.

One participant was of the view that models of excellence don't have to be set up: they evolve on their own. Quality of work depends on personnel—their experience and attitudes.

A few participants welcomed the idea because most of the voluntary organisations subsisted mainly on grants and also because quite a few schemes were Centrally sponsored but administered by the States.

Voluntary Sector: One participant wanted that before this sector could be evaluated, it had to be put on a scientific footing. A few others felt that most of the voluntary agencies depended substantially on official grants and that they did not have much voluntary input.

They were "10 per cent voluntary and 90 per cent government." Also, that they were prone to political influence.

Another participant pleaded for a greater understanding of voluntary sector and said that people themselves should be the source of any ideas on welfare programmes. Social workers should be based at the taluka level and not at the State or even the district levels so that they could be nearer the people. They should know what the people want and be the key persons in implementing the programme. She gave illustrations of how voluntary workers were active in areas where the government officials did not go very often. She regretted that some voluntary organisations were becoming dependent on the government.

One participant expressed his view that voluntary agencies were unable to get contributions from the public because of high taxation rates. The result was that the agencies had to

look to the government for grants.

Concurrent Jurisdiction: One participant felt that Mr. Kulkarni was reversing the trends in welfare. Most of the welfare programmes had to be given at the State level. As such there was no need to involve the Central Government. He received support from many others. One of them said, "Most of the action lies with the State Government; the Central Government can at the most give guidelines. This it does and for which it must provide funds so that State Governments can ensure that the guidelines are followed and that they move in the desired direction."

One participant favoured concurrent jurisdiction as a tool for removing disparities between different states. The Central Government could take initiative in this regard.

Resources: One participant advocated the greater use of proper budgeting in order to solve some, if not all, problems in resources. "Resilience is what is required," he said.

Another was of the view that the present child welfare policy was unrealistic and full of wishful thinking and fanciful statements. This was so because the basic problem was one of scarcity of resources. Radical solution was required. "We should consider closing down the social welfare department which had limited resources. The idea is that social welfare should permeate all other departments. Voluntary participation had to be mobilised."

One participant felt that the resources of local bodies too should be utilised. At present their role was negligible. Similarly, community participation was an important factor.

This line of thinking was pursued by another participant who suggested that the industrial sector could be called upon to contribute about 5 per cent of their finances for services for their workers' children. For a proper utilisation of available resources, he suggested that areas of operation should be carefully identified and only then should resources be allocated.

Another participant was of the view that resources could be properly utilised if services are properly coordinated. The agency entrusted with such a task should be very strong.

One of the ways of judicious use of scarce resources was to promote welfare of the handicapped and underprivileged children. There was no reason why priority should be given to services for normal children, according to one participant.

Yet another suggestion was that the beneficiaries themselves should pay for at least

some of the services which they utilise.

General: One participant stressed the importance of training staff at different levels and endorsed Mr. Kulkarni's viewpoints on the matter. Many services for children require expertise in the subject but the administrators do not always realise that such expertise is needed with the result that even package programmes such as the ICDS are not implemented properly. She pleaded for a well-equipped cadre of experts who could provide leadership to children's services.

Another participant questioned the premise that expertise comes from training. "It comes from experience," he averred.

One participant suggested that there should be a distinction between under-privileged sections and deprived sections because their problems were different.

One participant wanted that social problems, especially beggary in large cities, should be solved on a priority basis.

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One participant said that if children are by choice then it would be easier to develop services for them. For this purpose a family should be seen as a unit and should receive greater attention.

The chairman commented upon the wide-ranging debate on the working paper and highlighted the following points made by various participants. There was a need to review the policy for children's services in terms of both content and coverage. The family could be taken as a unit. An effort was needed to coordinate the work of all the departments and also to have an appropriate division of responsibilities. The local self-governments could also be involved in children's services. Programmes of research and evaluation could be taken up within the organisations.

All the services need not be free. But the question was: to what extent could services be charged for? Industrial sector could make its contribution to the welfare effort through its resources. Budgeting could be based on the principle of flexibility. Training of personnel—both professional and para-professional—could be promoted.

## VALEDICTORY ADDRESS

Mrs. Leela Moolgaokar, chairman of the Central Social Welfare Board, was in the chair for the valedictory function. Mr. Saran Singh, Secretary, Social Welfare Department, Government of India, gave the valedictory address. He drew attention to the magnitude of the children's problems in this country and said that a baby is born every one and a half seconds and that by 1989, there would be about 270 million children. Nearly 100 million children lived in conditions adverse to survival. Nearly 40 per cent of all deaths occurred in the age-group 0-5 years.

He traced the child welfare efforts and said that it was really in the Fifth Plan period that we came to grips with child welfare and development. The ICDS was launched and for the first time a comprehensive package of services was provided to the mother and the child. The National Children's Board too was set up following the declaration of the national policy on children. The outlay for child welfare was increased from Rs. 31.13 crores in the Fifth Plan to Rs. 54.50 crores in Sixth Plan. A national plan of action for the observance of IYC in India was also formulated.

According to Mr. Singh, the whole of 1980s were going to be very challenging and concentrated efforts would be needed for the effective realisation of the objectives. Child welfare was intimately linked with consanguine aspects of social development and cannot be viewed in isolation. "Besides controlling population we will have to concentrate on ecological conservation, community action, and basic services. Along with governmental efforts, the participation of local communities and voluntary organisations in children's services is of crucial importance. They should involve and assist the family in meeting children's basic needs", concluded Mr. Singh.

# Administration for Child Welfare A Select Bibliography

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# Laws on Access to Official Documents

Donald C. Rowat

THE MOST advanced democracies have been gradually coming to realise that they have inherited from earlier times a tradition of governmental secrecy which is incompatible with the people's right to know how they are being governed. The principle embodied in this tradition is that all administrative information is to remain secret except that which the government decides to release. This principle of 'discretionary secrecy' means that the government of the day has the discretion to keep secret whatever documents and information it wishes, and is free to do so to protect its own partisan interests. It also means that the public have no right to see or use the vast store of documents and data which have been paid for with their taxes, and that they do not have complete information upon which to base their judgments on public issues or their control over the government.

By now, several democratic countries have reached the conclusion that this principle is wrong and ought to be the reverse: all administrative information is to be open to the public except that which needs to be kept secret as defined by law. These countries have therefore adopted laws which establish the principle of governmental openness, and which provide a public right of access to all administrative documents and information except for specific matters that are narrowly defined. Such laws, of course, involve a radical shift in the balance between governmental secrecy and openness. Hence, governments contemplating a move toward greater openness have much to learn from a study of experience with these laws, and of proposals for similar laws in other countries.

The country having the longest experience with the principle of openness is Sweden. Its law on public access dates back to 1766. Other countries have adopted a similar law, but in much more recent times. Those having adopted one long enough ago to have had some experience with its actual working are: Finland (1951), Denmark (1970) Norway (1970) and the United States (1966). Countries in which laws on public access have been adopted recently or will soon be approved are: Austria, France, the Netherlands, Canada and Australia. This article will discuss the nature and impact of the older laws in Scandinavia and the U.S., the recent

developments elsewhere, and the lessons that may be learned from such a comparative review.

### THE OLDER LAWS IN SCANDINAVIA AND THE U.S.

Sweden

For over two hundred years the Swedish constitution has provided for open access to official documents and full information to any citizen about administrative activities. This provision was first adopted in 1766, as part of the Freedom of the Press Act, one of the country's four basic constitutional laws. It arose out of the intense struggle in the last half of the 18th century between the two main political parties, the Hats and the Caps. When the Hats were defeated in 1765 after a long term of office, the Caps inserted the principle of public access in the Freedom of the Press Act because of their frustration over administrative secrecy as well as press censorship under the previous regime. After a period of absolutism between 1772 and 1809, parliamentary government and the Freedom of the Press Act were re-established, and the principle was soon fully accepted as part of the normal political life of Sweden. While in most countries all administrative documents are secret unless specific permission is given for their release. in Sweden they are all public unless legal provision has been made for them to be withheld.

The Swedish constitution recognises that there are certain types of documents that ought to be kept secret, and lists them as exemptions from the general rule. The actual wording is as follows:

To further free interchange of opinions and enlightenment of the public every Swedish national shall have free access to official documents. The right to have access to official documents may be restricted only if restrictions are necessary considering: (1) the security of the Realm or its relations to a foreign state or to an international organization; (2) the central financial policy, the monetary policy, or the foreign exchange policy of the Realm; (3) the activities of a public authority for the purpose of inspection, control, or other supervision; (4) the interest of prevention or prosecution of crime; (5) the economic interests of the State or the communities; (6) the protection of the personal integrity or the economic conditions of individuals; or (7) the interest of preserving animal or plant species.<sup>2</sup>

<sup>1</sup>The material in this article is based on my comparative report in Administrative Secrecy in Developed Countries (London: Macmillan; and New York: Columbia University Press, 1979), on my research report for the Ontario Commission on Freedom of Information and Individual Privacy, Public Access to Government Documents: A Comparative Perspective (Toronto, 1978), and on visits to all of the countries concerned.

<sup>2</sup>Constitutional Documents of Sweden (Stockholm: the Riksdag, 1978), 18.

It will be noted that all of the general circumstances traditionally used as arguments against free access to administrative information are covered by this list of exemptions. It should also be noted that in general the right of free access is to prevail and that this right shall be subject, as the constitution says, 'only' to the exceptions listed. The constitution goes on to say that the specific cases in which official documents are kept secret shall be 'closely defined' in a special statute. As one might expect in a modern welfare state, this law, called the Secrecy Act, spells out an impressive list of matters that must be kept secret. But, as an eminent Swedish scholar, Prof. Nils Herlitz, has pointed out:

The detailed catalogue of the Secrecy Act has also a considerable effect *e contrario*. Since we have modern legislation providing for secrecy when it is necessary...it follows that where publicity is required, it must be properly and conscientiously adhered to. And publicity has nowadays a very strong support in public opinion, as a keystone of our constitutional system. It is a considerable and effective force felt in every section of social life.<sup>3</sup>

A full appreciation of the impact of the Swedish principle of open access can be gained only by giving some examples of the extensiveness of its operation. It applies, for example, to public documents kept by all sorts of administrative agencies, from government departments to police officers, administrative tribunals and local governments. Moreover, anybody is entitled to ask for documents; he does not have to show that he has a legal interest in seeing them nor is he obliged to say for what purpose he wants them. To make sure that agencies do not purposely delay in answering a request, the constitution provides that a requested document shall be "made available immediately or as soon as possible", and the courts in their judgements have taken this rule seriously.

The definition of 'official documents' includes not only those prepared but also those received by a public authority. And their availability to the newspapers has been organised as a routine service:

Every day, in the great offices in Stockholm, for instance, documents which have been received will be brought to a room where representatives of the newspapers are welcome to see them. A representative of the leading news bureau will never fail to appear, and through him a flood of news will go to the newspapers and to the general public. The purpose is this. Just as publicity in the courts all over the world makes it possible for everybody to know how justice is administered, the publicity of documents has the same effect insofar as documents reflect the activity

of the authorities; the publicity shall provide (as the Constitution says) 'general enlightenment'.4

When I visited Sweden in 1973 to study its unique system of openness, I was lucky enough to accompany a reporter who worked for the Swedish national press agency, as he made his daily rounds of three government departments. To my amazement, all incoming and outgoing documents and mail were laid out in a special press room in each department for an hour every morning for reporters to examine. If my reporter wanted further information on a case, he simply walked down the hall to look at the department's files. No special permission was needed. Such a system of open access is so alien to the tradition of secrecy elsewhere as to be almost unbelievable. Prof. Herlitz has noted that when he would give a speech about it in other countries, he was often amused by the reaction of his audience. It was clear that they pondered questions such as these: "Is this man unable to express himself intelligently in my language? Or is he mad?"

The Swedish tradition of openness is so firmly embedded that the Secrecy Act, government regulations, the courts and the ombudsmen all place great weight on the need for free public access to administrative documents. For instance, in the Secrecy Act itself and in government regulations, the secrecy of documents is valid for only a specified period of time, and the restrictions are not valid for documents preserved in the courts. The Secrecy Act, far from stating that the documents of the Foreign Office or of the armed services are to be kept secret altogether, carefully enumerates those which may be kept secret temporarily. And in many cases the ombudsman for military affairs has insisted upon publicity of information unjustifiably withheld by the military establishment. It is also noteworthy that most of the secrecy exemptions do not refer to documents containing administrative decisions on individual cases. Here the rights of persons having an interest in seeing the documents have been upheld by the courts in a great number of cases. The principle of free access to documents is also upheld in a positive way by regulations which require special arrangements to facilitate easy access by the press, scholars, interested parties and the public generally. Most agencies, for example, keep up-to-date diaries in which information about documents received is easily available.

At the same time, an important limitation on access to administrative documents has been created by the distinction between official documents and internal working papers. An understanding of this distinction is vital because of the false arguments used in other countries by some opponents of access. They claim that public access would seriously interfere with the day-to-day work of administration, and would inhibit public servants from

<sup>&</sup>lt;sup>4</sup>N. Herlitz, op. cit., 54-5. <sup>5</sup>Ibid., 50.

giving frank advice to their superiors for fear it would be made public. It is important to realise that there is no right of access to internal notes, drafts and tentative working papers. The right applies only to completed documents or documents sent from one authority to another. Thus, normally the right of access exposes to public view only an official's fully considered advice in theform of a finished document. This is not likely to inhibit his frank opinions, which can still be given to his superior confidentially if necessary. Indeed, knowing that his written advice on an important matter may be made public, he is likely to think it out more carefully and to present a view that is not only more clearly argued and more fully supported but also more objective. In short, his advice will be better.

Since the distinction between an official document and a working paper cannot always be drawn easily, no doubt officials in Sweden sometimes take advantage of this fact to keep information confidential in the form of an exempt working paper which, if defined as an official document, would be publicly available. Much administrative information at the policy-making level within ministries is thus kept confidential, although many policy documents are released which in other countries would be considered internal documents. For instance, although ordinarily ministry documents on a policy matter are not publicly released until a decision has been made by the cabinet, at that time all of the supporting documents, including those containing the views of senior officials, are released with the decision.

Sweden's long experience with the principle of openness indicates that it changes the whole spirit in which public business is conducted. It causes a decline in public suspicion and distrust of officials, and this in turn gives them a greater feeling of confidence. More important, it provides a much more solid foundation for public debate, and gives citizens in a democracy a much firmer control over their government.

One of the favourite claims advanced by those who oppose open access is that Swedish officials evade the access law on a large scale by passing information to one another orally instead of committing it to paper. This claim, of course, is impossible to document, but unfortunately it is similarly difficult to disprove. My own view is that it is mainly a myth dreamed up by opponents of administrative openness which is based on false fears and on two serious misconceptions. The first misconception is a lack of understanding that in Sweden there is no right of access to working papers. This means that it is quite possible to transfer confidential information in written form within a department or the ministries. The second misconception is the assumption that Swedish officials want to withhold non-secret information. My interviews with Swedish officials have led me to believe that, on the contrary, they are so imbued with the tradition of openness that they automatically expect as much information as possible to be released. It is true that a few matters of a delicate nature, such as personal recommendations, are

dealt with orally or by telephone rather than committed to paper, as they would be in any country. But my Swedish informants felt that in this respect the administrative practices in Sweden were not much different from those in other countries. In fact, one of my informants, a departmental administrator, insisted that the tradition of documenting everything was so strong in Sweden that officials do not transfer information orally by telephone or interview as much as they should, or even as much as officials do in other countries.

Those who argue that the attitude of openness with which Swedish officials are imbued cannot be created quickly are probably right. A longstanding tradition of secrecy cannot be reversed overnight simply by passing an access law. The law must be accompanied by a thorough programme of administrative training in the new practices it requires. Such programmes were conducted in Denmark and Norway when their new access laws were adopted, and this goes far towards explaining the successful implementation of these laws. At the same time, because of the natural tendency for officials to withhold information for their own convenience, the public and the press must be constantly vigilant to enforce their rights of access. This vigilance must be supported by a thorough knowledge of their rights. Hence the provisions of the law and the key decisions interpreting these provisions must be widely known among not only officials but also news reporters and the general public. To meet this need in Sweden, Mr. B. Wennergren, a former ombudsman, produced a short book on the provisions and key interpretations of the laws on public access. In an excellent comparative article, his conclusion regarding the Swedish experience is that the right of access is very seldom abused, and that it does not impede the daily work of administration "to any degree worth mentioning".6

# The Other Scandinavian Countries

Because Finland was part of Sweden in the 19th century, it has inherited much of Sweden's tradition of openness, but in a considerably weaker form and without a constitutional right of public access. In fact, it was not until 1951 that Finland's practices and regulations on the subject were consolidated into a law, the *Law on the Public Character of Official Documents*. Denmark and Norway have also adopted laws on public access to official documents but only in very recent times. Oddly, both countries passed laws on the subject in the same year, 1970, though Denmark had already adopted a law in 1964 providing for a citizen's right of access to documents in his own case. The Act of 1964 became part of its more general law of 1970.

A comparison of the legal provisions in these three Scandinavian countries

<sup>&</sup>lt;sup>6</sup>See B. Wennergren, "Civic Information—Administrative Publicity", *International Review of Administrative Sciences*, XXXVI, 24 (1970), 249.

with those in Sweden reveals some significant differences.7 The main one is that their provisions for public access are weaker and less far-reaching than Sweden's, while their provisions for secrecy are more general and hence broader. In Sweden the law that establishes the general right of access, the Freedom of the Press Act, is part of the constitution, which means that it can be amended only if the amendment is repassed after an intervening election. The Secrecy Act, on the other hand, is only an ordinary law. Except notably for the categories of foreign affairs and national defence, it lists these exceptions in narrow and limiting detail. In Finland, though the public access law of 1951 is an ordinary law, the more detailed secrecy provisions are in the form of a decree, which has a lower legal status. These provisions are much briefer and more general than in Sweden, and hence leave more discretion to officials and less specific grounds for appeal. The Public Access Acts in Denmark and Norway are also ordinary laws, which include general exemptions from access. These exemptions, too, are much broader than those in Sweden's Secrecy Act.

The Danish and Norwegian Acts do not provide as full a right of access as do the laws for the other two countries. In Denmark and Norway reporters or citizens must identify and request specific documents. This means that they must know that a document exists before they can ask for it. In Denmark, since they do not have access to departmental registers, they may not even know that a document exists. These are serious limitations on public access. They help to explain why the Danish national press bureau does not consider it worthwhile to send reporters on daily visits to the ministries. An official in the Danish Ministry of Justice informed me that, since the adoption of the Danish and Norwegian Acts in 1970, his ministry had received only a handful of requests for documents from the press and the public, while in Norway every morning a reporter would call at the Ministry of Justice and ask to see several documents. However, the Danish Act is to be reviewed by a parliamentary committee, and an amendment may grant access to departmental registers.

Though the laws in Denmark and Norway are more restrictive than those in Sweden or even Finland, when these laws were adopted a serious attempt was made to implement them liberally. For example, officials in the Danish and Norwegian Ministries of Justice conducted training sessions for public servants in other ministries and agencies, and gave them guidelines on the changes in practice needed to give a liberal interpretation of the new law. Both ministries have placed advertisements in all daily newspapers to inform citizens of their right of access to official documents. A Norwegian advertisement in 1975 featured a cartoon of four citizens poking into a

<sup>&</sup>lt;sup>7</sup>The following comparative survey is based on my general comparative report in the book which I edited for the International Institute of Administrative Sciences, Administrative Secrecy in Developed Countries, op. cit.

bureaucrat's files, and gave a simplified explanation of the Act. It pointed out that a citizen does not have to give a reason for wanting to see a particular document; "pure curiosity is a satisfactory ground," it said, and added that if his request is refused he can appeal to the ombudsman or a court.

One of the most significant differences between Sweden and the other Scandinavian countries is found in the types of authorities that hold the administrative documents. In Sweden governmental departments are separated from the ministries under boards, and have much the same degree of independence as public corporations or regulatory bodies in other countries. As a result, when a department wishes to communicate formally with any ministry, it must produce a document which is then sent through the mail to the ministry, and this makes it publicly accessible. Thus even policy advice at a high level from a department to its relevant minister becomes public knowledge, whereas in other countries such advice is normally passed from a department to its minister as an internal document. This fact is of great importance in contributing to the openness of the Swedish administrative system. On the other hand, as in other countries, since the ministers as a collegial executive are considered to be a single unit, documents passing from one ministry to another before decisions are taken are regarded as internal working documents and therefore not accessible.

Because the effectiveness of an access law depends heavily on the organisation, traditions and practices of the press, we should also note the differences in this respect among the four countries. In Sweden, the national press bureau sends reporters on daily rounds of the ministries and most important departments and agencies. It has about fifteen reporters who cover about seventy ministries and departments. As a result, the bureau sends out annually about 5,000 government stories on the national wire and about 40,000 to local newspapers. Reporters in Norway and Finland (but not Denmark) also do daily rounds of ministries but there the coverage is not so thorough. In Finland, for instance, during my visit in 1973 reporters from the national press bureau were making daily rounds to only three ministries: Interior, Transport, and Social and Health. Finnish reporters do not call daily at the ombudsman's office, and rely mainly on his press releases and annual report for news stories on cases. Some of my informants stated that the main reason the press bureau had not extended the system to other ministries was the cost of extra staff and of photocopying documents, while others argued that it was simply a matter of tradition and inertia on the part of the press bureau. Another factor, however, may be the reluctance of the government to provide facilities for the press in each ministry.

Since the media are interested in current news, they of course rely heavily on oral information obtained quickly from officials by personal interview or telephone. The easy accessibility of oral information is therefore of prime importance to the press. Even before the new access Acts were passed in Denmark and Norway, press relations with officials were very good. Partly for this reason, reporters and news organisations have not had to appeal many cases under the new laws. A more important reason, however, may be that the very existence of the access laws has given reporters a lever with which to press for information. The ability to threaten to ask for documents in a case no doubt forces officials to be freer in offering information orally and to be surer that their information is accurate.

Two outstanding examples may be given of information revealed through the press soon after the Danish Act went into effect. In the first case, the press demanded and got documents containing proposals made to the government by the SAS airline, a Scandinavian government corporation. Formerly, these documents would have been secret. The other was a case in which a newspaper published accusations against local public welfare homes. The government asked the homes for reports in response to these accusations, and the newspaper successfully requested and published these reports. Since the reports showed many of the accusations to be false, their publication helped to clear the air, and may be regarded as a desirable public service.

In Sweden and Finland an important buttress to press access is the legal requirement regarding the non-revelation of news sources. News reporters cannot be compelled by the courts to reveal the name of a person who gave them information, even if this person was a public employee. In Sweden, if there is a 'leak' of information, a senior official is not even allowed to ask a reporter from whom he got his information, and the official may not conduct a search for the name of the offending junior official, unless the information was clearly in the secret category under the law. This constitutes a powerful protection against governmental withholding of information. It is in marked contrast to the ambivalence of court decisions on this subject in the commonlaw countries, though several American states have similar 'shield' laws for reporters.

In all the four countries, as in other countries, the originator of a document may indicate its security classification by placing a secrecy stamp on it. But the difference from most other countries is that neither he nor his superiors may make the final decision as to its secrecy. It must fall in the category of matters which are listed as secret according to law, and if a reporter or a private citizen disputes the classification, he may appeal to an independent authority for a decision on whether the document should be released.

It is important to note that in the Scandinavian countries there is more than one independent authority to which an appeal can be made. In Finland and Sweden the appeal can be taken to the ombudsman, the Chancellor of Justice or the Supreme Administrative Court, while in Denmark and Norway it can be taken to the ombudsman or the ordinary courts. The difference between the types of appeals that go to a court and to an ombudsman (or to the Chancellor of Justice) usually depends on the seriousness of the case. For instance, a reporter or a private citizen would usually complain to an

ombudsman, while a newspaper or business firm would usually take a case to the court. The reason is that an appeal to the courts is more costly and time-consuming, but results in a binding decision. An ombudsman's decision is only advisory, though it is almost always accepted by the government. There are more appeals in Sweden than in the other Scandinavian countries and most of them are made in the form of complaints to the four parliamentary ombudsmen.

Two examples of appeals made in Sweden will give some idea of how its appeal system works to limit secrecy. These were among several kindly chosen and translated for me by the Swedish ombudsman. One is from the ombudsman's annual reports, and the other from the records of the Supreme Administrative Court. In the first case, an officer reported to the military ombudsman that a practice had developed in the armed forces for officers to communicate by letters marked personal. He wanted to know if such letters could correctly be regarded as personal documents. The ombudsman replied that what made a document official and public was its contents irrespective of whether it was marked personal. A letter about an official matter should therefore be regarded as an official document and, if no secrecy clause was applicable, as a public one. The armed forces then changed their practice to conform with the ombudsman's conclusion.

The second case concerned a Swedish colonel unmasked as a spy who had delivered crucial military secrets to the Soviet Union. A special commission appointed to investigate had requested the Prime Minister, the Minister of Defence and the Minister of Justice to submit written reports about the matter. When the reports arrived, a journalist asked to see them, alleging that they were official and public documents. The commission refused, and in justification referred to Article 10 of the Secrecy Act, which provides for the secrecy of investigations by the police and prosecutors. The journalist then appealed to the Supreme Administrative Court, which concluded that the commission could not be regarded as a police or prosecuting authority and therefore ordered the documents to be released.

# The United States

The United States has enjoyed a stronger tradition of governmental openness than that of most other countries. Nevertheless, until very recent years, the release of administrative documents was largely at the discretion of the chief executive, whether federal or state, or the heads of his departments and agencies. At the federal level, it was not until 1946 that provisions were included in a congressional law, the Administrative Procedure Act, which attempted to require the routine disclosure of government-held information. It stated as a general principle that there should be free public access to administrative documents except for certain broad exemptions. However, the attempt failed, partly because of the vague language of the exemptions. Thus the Act exempted from disclosure records involving "any

function of the United States requiring secrecy in the public interest" as well as "information held confidential for a good cause found". Moreover, only "persons properly and directly concerned" were entitled to procure certain public records, and there was no provision for judicial remedy. The attempt also failed because the Act was soon followed by the period of the Cold War in the 1950s, in which the desire to protect national security caused almost a mania among government officials for keeping information secret. The result was an unnecessary over-classification of millions of government documents.

An important change came with the passage of the Freedom of Information Act in 1966, however. This Act, replacing the provisions of 1946, stated unequivocally that public access to most documents was to be the general rule. More significantly, it listed what types of documents could be kept secret, in nine general categories of exemption, and provided for a means of public appeal against withholding. These provisions finally established the Swedish principle of openness: disclosure is the general rule, and documents may not be withheld unless they fall under one of the exemptions specified by law. The categories of exemption, however, are much broader than those of Sweden and hence leave more room for official discretion and judicial interpretation. Difficulties arose in requiring departments and agencies to comply with the Act and in interpreting the meaning of some of the exemptions. For this reason it was amended in 1974. In that year Congress also passed a related Privacy Act, which allows citizens to see personal files being held on them in government agencies, subject to certain exemptions.

The new provisions put into the Freedom of Information Act in 1974 have made it much easier for citizens to enforce their rights. The onus has been put firmly on government agencies to prove why they should not release requested documents, instead of the citizen having to prove why he should have them. Also, administrative officials are now instructed to reply to a request for a document within ten working days, and to an appeal to a higher authority in the department within a further twenty working days, though for special reasons they can get an extension to a total of forty days. They are also required to release all non-secret information that is segregable, even in a secret file. This has necessitated what officials refer to as a 'paragraph-by-paragraph' review of documents, and may result in a requester obtaining a document with certain names or material blanked out.

Moreover, the language of some of the exemptions has been tightened up, so that officials can no longer hide matters as easily under them. The actual wording of the nine exemptions as amended in 1974 (with the amendments shown by underlining) is as follows: the right of access does not apply to matters that are:

1. (A) specifically authorised under criteria established by an Executive Order to be kept secret in the interest of national defence or foreign

- policy, and (B) are in fact properly classified pursuant to such Executive Order:
- 2. related solely to the internal personnel rules and practices of an agency;
- 3. specifically exempted from disclosure by statute (amended in 1976 to add: ...provided that such statute (A) requires that the information be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of information to be withheld);
- 4. trade secrets and commercial or financial information obtained from a person or privileged or confidential:
- 5. inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- 6. personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- 7. investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;
- 8. contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- 9. geological and geophysical information and data, including maps, concerning wells.

It will be noted that the most important areas of exemption are the same as those in the Scandinavian laws.

Under the addition to the first exemption, a judge can now examine even classified documents to see if they were properly classified or whether excised parts were legitimately blanked out to protect national security or individuals. A department's fear that a decision to withhold information will be overturned by the courts is a very sobering corrective to oversecretiveness. If a citizen appeals to the courts and wins his case, the judge can now order the government to pay all of the court costs.

Under the amended Act a citizen is no longer required to request a specific document. Since he may only suspect the existence of a document that ought

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to be revealed and cannot request it specifically, it is now sufficient to 'reasonably describe' the documents he wants, and he can request all documents on a specified matter. Also, he can inspect these documents and only has to pay for the ones of which he wants photocopies, usually at the rate of ten cents per page, plus a search fee of \$7.50 per hour if this is necessary. The fee is waived by some agencies, especially in the case of indigents or if the request is for information to be released in the public interest rather than for personal reasons. Thus the Central Intelligence Agency has waived most of its search fees, while the Federal Bureau of Investigation has not.

The revised Act also provides for disciplinary action against officials who wrongfully refused to release documents, permits officials to release exempted ones, and requires the departments and agencies to submit annual reports to Congress. These reports give such information as the cost of handling requests for documents, the names of the officials who have refused requests, the number they have refused, and the number of appeals against refusals.

Under the more liberal guidelines of the 1974 amendments, requesters have flooded the federal courts with appeals, where they get priority over other cases. From the cases already decided under the new guidelines, it is clear that the courts will be much less favourable to the administration than they were before 1974. Until now they have usually accepted a department's affidavit stating the reasons why a matter must be kept classified, but the courts may now start using their new power to look at a classified document to see if all or part of it can be ordered to be released. There are also other problems of interpretation still to be solved, notably regarding the meaning of 'reasonably described' records and of 'internal agency memoranda'. A more precise meaning for many of the provisions, especially the new amendments, still remains to be spelled out by the courts.

The Privacy Act opened up another large category of government files when it came into effect in September 1975. Under it citizens now have the right to ask if a federal file is being held on them and to inspect it. The Act is an omnibus measure regulating the acquisition, storage, retention and dissemination of personal files held by federal agencies. It gives individuals an enforceable right to demand correction of files which are not accurate, relevant, timely and complete. Also, agencies may only disclose files where authorised by statute, or with the permission of the individual affected. And they must publish annually a description of their personal records systems, the categories of individuals and kinds of data covered by each system, the uses to which the information is put, and the agency policy regarding storage and disposal.

Many citizens make a request for their file under both Acts in the same letter. There are advantages in doing this because, though the Privacy Act has fewer secrecy exemptions than the Freedom of Information Act, and allows private access to the file, the Central Intelligence Agency and law

enforcement agencies like the Federal Bureau of Investigation are completely exempt from the Privacy Act, and it does not include the instruction for a reply within ten working days.

In 1976, the first full year after both the 1974 amendments and the Privacy Act went into effect, the federal departments and agencies received a tremendously increased number of formal requests for access to official documents, the total estimated to be about 150,000. These requests were not only from private citizens, but also from the press, organisations and business firms. Some agencies, like the FBI and the CIA, received thousands of requests from individuals wanting to know whether these agencies kept a file on them and, if so, what was in it. Before the end of the year, such agencies had a huge backlog of unprocessed requests, and by the summer of 1977 the FBI had to bring in 400 of its regular operatives from the field to handle them.

Many startling cases have been brought to light since the teeth were put into the Information Act in 1974. One of the most shocking was the disclosure in 1977 of CIA files on what is called the MK-ULTRA case. It has been revealed that for twenty-five years the CIA was masterminding experiments on human guinea-pigs designed to control their minds with powerful drugs. One of the subjects later committed suicide, and some subjects were chosen because they were dying. Other examples are the revelation of CIA files on the planned assassination of foreign leaders and on the training of local policemen as burglars. Requests under the Information Act have also shed new light on subjects as diverse as the mysterious Glomar Explorer, the Pentagon Papers, and the espionage conviction of Julius and Ethel Rosenberg.

The reports to Congress required by the 1974 amendments reveal some interesting statistics. In 1976, of the estimated 150,000 requests under both the Information and Privacy Acts, about 25,000 or 17 per cent were denied in whole or in part. About 4,200 of these denials, or again about 17 per cent, produced appeals to the head of the organisation. In over half of these cases, the head changed the original decision and released part of the information requested (46 per cent) or all of it (12 per cent). The result is that only about 15 per cent of the documents requested were wholly denied by the departments and agencies on the ground that they fell under one of the secrecy provisions of the Act. Mainly responsible for these denials were the security and law enforcement agencies, which still deny large numbers of requests for personal documents.

Because of the large number of requests under both the Acts, compliance has of course produced problems for the administration, especially the welfare, defence, treasury, security and law enforcement agencies, which receive the bulk of the requests. Thus the Department of Justice claims that, including the FBI, the amount of time it devoted to freedom of information and related privacy requests rose from 120,000 man-hours in 1975 to more

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than 600,000 in 1976, and has protested that the increased workload and the potential revelation of secret information weakens its law enforcement capacity.

Some agencies do not produce replies within the Information Act's specified time schedule, which they argue is unrealistic in the case of classified and personal records requiring a line-by-line review. For instance, both the FBI and the Department of Justice, to which the FBI appeals go, have been running about six to eight months behind the schedule. A ruling in 1977 by the courts that the Act's time constraints are "not mandatory but directive" has certainly not helped to speed up compliance. Most departments and agencies, however, have managed to stick to the schedule.

Another difficulty for the departments and agencies in complying with the Acts is the cost. The total cost for 1976 of handling requests under both Acts was nearly \$20 million. Of this, about \$5.3 million was spent by the Department of Health, Education and Welfare, \$4.7 million by the Defence Department, and \$4.5 million by the Treasury Department. But when these figures are compared with the total budgets of these departments, they turn out to be a miniscule share, far less than 1 per cent. They must be weighed against the public interest to be served by releasing information and enforcing the public's right to know.

Another problem is that the Information Act is being used for purposes not intended by Congress. It was expected by the Act's proponents that it would be mainly of use to the press in digging embarrassing information out of a reluctant government. Instead, it has been mainly used by individuals, scholars and business firms. No one imagined the large number of individual requests that would come pouring in. This was mainly due to the loss of faith in government during the Nixon years, stimulated by a number of citizen-aid groups and 'storefront' legal firms that have sprung up. These organisations will pursue an appeal for a citizen, pay the costs if he loses, and collect costs at the full legal rate if he wins. Two of the most important ones are the Freedom of Information Clearinghouse and the Project on National Security and Civil Liberties. Both of them distribute pamphlets to the public explaining the Act, urging people to make use of it, and even providing model request letters to government agencies. The second organisation is headed by Morton J. Halperin, a former deputy assistant secretary of the Department of Defence, and has successfully appealed to the courts some of the most important cases in recent years.

It was not anticipated that business corporations would make so much use of the Act. They have used it not only to get general information from the government that would be of value to them, but to get information on their competitors. New business and law firms have sprung up which specialise in this activity, and which carry appeals to the courts. Now the competitors are fighting back with what are called 'reverse freedom of information cases', in which they seek a court injunction forbidding the government to release

requested documents, and the government is having greater difficulty in collecting sensitive information from business corporations.

The 1974 amendments were vetoed by President Ford and became law only because they were repassed in Congress by the necessary majority of two-thirds under the constitution. But the Carter administration has supported the broadening of the Act. In May of 1977, Attorney General Griffin Bell issued new guidelines requiring agencies to release documents, even if they fell under one of the nine exemptions, when this would not be 'demonstrably harmful' to the government or any individuals involved. He also warned that in future the Department of Justice might decide not to defend an agency in court for refusal to release documents if the Department regarded them as harmless. Until then, it had almost automatically defended all such refusals.

The general opinion in the United States is that the Freedom of Information Act as amended in 1974 and supplemented by the Privacy Act has been highly successful in meeting its objectives. Many of the difficulties that its enforcement has created are temporary problems of implementation, and the others can be solved by further minor amendments to refine the law. Clearly, a strong Freedom of Information Act has not, as opponents feared, seriously slowed the wheels of government administration. Indeed, it appears to have been well accepted by most administrators, who are attempting to implement it in good faith. Many of them even admit that its effect on the administration has been salutary, and results in the preparation of better documents and reports. As Professor Anderson has noted, open records laws exert "a pervasive preventive effect by virtue of the sobering influence of prospective public scrutiny".8

The movement of public opinion that sired the Freedom of Information and Privacy Acts also fostered three related federal laws designed to promote openness. One of these is the Federal Advisory Committee Act, passed in 1972, which covers some 1250 advisory committees whose membership includes non-government employees. Another is the Government in the Sunshine Act, passed in 1976, which applies to the federal regulatory agencies and other statutory authorities. These committees, agencies and authorities are now required to open their meetings to the public, except when discussing matters similar to the exemptions under the Freedom of Information Act. Also, they must keep minutes or transcripts of their meetings, and citizens have a right to challenge both the closure of a meeting and the non-disclosure of the minutes or transcript. The third law, the Family Educational Rights and Privacy Act of 1974, requires schools receiving federal funds to permit

<sup>&</sup>lt;sup>8</sup>S. Anderson, "Public Access to Government Files in Sweden", American Journal of Comparative Law, XXI, 3 (Summer 1973), 447.

<sup>&</sup>lt;sup>9</sup>See J. McMillan, "Making Government Accountable—A Comparative Analysis of Freedom of Information Statutes", New Zealand Law Journal (1977), 287.

older students or the parents of younger students to inspect school records. The Act also contains rights to correct inaccurate or misleading records and to restrain the disclosure of personally identifiable records.

The amendment of the federal access Act in 1974 and the passage of these related federal laws have given a strong push to the movement for state laws on access to state records and personal files and on open meetings of state and local bodies. A recent survey (by Plus Publications, Inc.) shows how much progress has been made by the states in passing such laws. By 1977 forty-eight states had enacted state-wide public access laws. Mississippi and Rhode Island were the only ones that had not done so. Moreover, with the passage of open-meeting laws in New York and Rhode Island in 1976, all the fifty states and the District of Columbia now have some form of open-meeting law. Also, a majority of them now have shield laws for reporters, and gradual progress is being made toward adopting laws designed to provide access to personal files and to protect the various other aspects of personal privacy.

### RECENT DEVELOPMENTS ELSEWHERE

Aside from Scandinavia, three other countries of Western Europe have recently provided for a public right of access to administrative records. Austria adopted limited provisions for public access in 1973, while France and the Netherlands passed full-fledged access laws in 1978. Access laws have also been approved in two of Canada's provinces (Nova Scotia and New Brunswick in 1978), and Canada's new Conservative government at the federal level introduced a Bill on the subject in October 1979. Similarly in Australia, a government Bill was placed before parliament in 1978 and separate legislation is also being considered by some of the states.

Austria

In 1973 the Austrian Federal Parliament provided a limited right to administrative information by inserting two clauses in the Federal Ministries Act that gave ministries a 'duty to inform'. One clause requires each federal ministry to provide information to the public on request, and the other requires each federal minister to ensure that the subordinate authorities under his jurisdiction do likewise. However, this duty to furnish information is subject to the constitutional obligation of civil servants to observe official secrecy if it is in the interests of an administrative authority or the parties concerned. The Austrian government has approved a set of guidelines to implement these clauses of the Act. The guidelines, however, are rather restrictive. They provide, for instance, that there is no duty to allow inspection

<sup>10</sup>See L. Adamovich, "The Duty to Inform in Austria as a Means of Realizing Freedom of Information", in *Proceedings of the Colloquy of the Council of Europe on Freedom of Information and the Duty for the Public Authorities to Make Available Information* (Strasbourg: Council of Europe, 1977), pp. 27-37.

of documents, but only to communicate the contents of documents. The obligation to furnish information only applies where the decision-making process has terminated and has led to a tangible result. Requests do not have to be met which require the evaluation of voluminous materials or the preparation of detailed papers; and an inquiry must be directed towards a specific matter.

On the other hand, a refusal to provide information can be appealed to the administrative courts. This means that the public's right can be enforced and may be enlarged through judicial interpretation. Thus Austria has moved from a country where discretionary secrecy was the rule to one which now provides a limited right to administrative information.

#### France

Before 1978 France had the traditional system of discretionary secrecy but, as in other countries, this was combined with a number of provisions for administrative openness. For instance, municipal council meetings must be open, and new town plans have to be considered at a public inquiry. Also, individuals have access to the registers of births and deaths, and they have broad rights of access to official documents in their own case, in both the ordinary and administrative courts. In recent years, however, there has been an insistent demand in responsible quarters for greater openness and a general right of public access in statutory form.

This demand gained force in 1973 when a commission for the coordination of administrative documentation submitted a report to the Prime Minister which concluded by proposing:

the institution of a genuine right to communication for members of the public. The right's fundamental principles should be laid down by the legislature, for only intervention by the latter could make the impact necessary for the reversal of the most deeply-rooted administrative habits. The promulgation of an act on the right to information would be in keeping with a process already initiated by many liberal countries.<sup>11</sup>

Following this proposal, the Prime Minister established a working party which in 1976 submitted a Bill and a draft decree. In 1976, too, the government announced that it would introduce privacy legislation to grant individuals a right of access to their personal files, to have them notified when information about them had been gathered, and to establish a national commission to control computer data banks.<sup>12</sup> This legislation was passed in January 1978 (no. 78-17).

<sup>&</sup>lt;sup>11</sup>Quoted in L. Fourgere, "Freedom of Information and Communication to Persons of Public Documents in French Theory and Practice—Present Situation and Plans for Reform", in *Proceedings of the Colloquy, op. cit.*, 52.

<sup>12</sup>McMillan, op. cit., 277.

In February 1977 the government issued a decree establishing a commission charged with favouring the communication of official documents to the public. This commission, chaired by M. Ordonneau, a member of the Council of State, was empowered to determine by regulations the documents to be released on request, to advise the ministers and prefects (provincial governors) on any question relative to the application of the decree, and to make proposals on the revision of the laws and regulations related to the release of administrative documents. It was thus an unusual combination of an executive body, with powers to require greater openness, and a study commission that could propose amendments to the laws, and could propose a law on public access if it so chose. But the membership, consisting mainly of officials plus some members of parliament, was rather conservative and seemed likely to favour a gradual approach toward changing the attitudes and practices of public servants rather than a dramatic reform through legislation.

To the surprise of the commission, on July 17, 1978, the French parliament passed a law (No. 78-753) which contained provisions inspired by the American Freedom of Information Act, and which established a new commission to enforce the law, the Commission on Access to Administrative Documents, which is also chaired by M. Ordonneau. The Commission began its work early in 1979, even though the decree needed to give the law a more detailed specification had not yet been issued.

This law will give a much firmer foundation to the principle of public access than did the decree and commission that preceded it. Like the American Act, it declares and guarantees a right to administrative documents, including documents in one's own case, subject to a list of exemptions, and it applies to all emanations of the state, including territorial collectivities. The provisions requiring a reply to a request are rather strong, and there is provision for appeal to the independent administrative court system. However, the exemptions are very broad, thus giving considerable room for official discretion, and the lists of specific documents which must be kept secret are to be laid down in ministerial regulations (though these are to be framed after receiving the advice of the new commission). The new commission is charged with supervising the implementation of the law. Somewhat like an ombudsman, when appealed to by a person who has had difficulty in obtaining the release of a document, it is to give its opinion to the competent authority. Also, it is to advise the authorities on the application of the law, and may propose suitable amendments to the laws and regulations.

Considering the traditional secrecy of French officials, this new law seems to be a giant step forward. But the extent to which it and the new commission will succeed in altering existing official attitudes and practices remains to be seen.

# Netherlands

Like France, the Netherlands has had a system of discretionary secrecy

combined with specific provisions for openness and access. In recent years, however, there has been a strong demand for a law providing for a general right of public access to documents.

This demand took an official form in 1970 with the publication by a commission on governmental openness of a report which recommended a law on access to administrative information, and which contained a draft Bill. After considerable public discussion, the government introduced its own draft Bill on the subject in 1975. This Bill was considered by the lower house of parliament and, after a committee received the views of various organisations, was heavily amended. The lower house approved a final version in February 1977, but because of the fall of the government in that year, approval of the Bill by the upper house was delayed. However, it was finally approved in November 1978, as the *Openness of Administration Act*, to go into operation as soon as regulations under the Act had been approved.

While much like other access laws, an unusual feature of this Act is that it provides a right to the information in administrative documents rather than to the documents themselves. This, unfortunately, provides an opportunity for officials to interpret the contents of documents to suit their own interests, rather than permitting direct access to the actual documents. Also, the secrecy exemptions in the Act are very broad. Two of them are introduced by the word 'might', and are so general that the government or officials could include under them almost any information that they wished. Thus, information "shall not be divulged if it might: (a) endanger the unity of the Crown, or (b) damage the security of the State". Because of this and other provisions, Dutch legal scholars have complained that the Act is too weak to improve existing public access very markedly. One scholar has called it "whipped air and cheese, with big holes". 13

The Act does have some strong aspects, however. For instance, it requires the publication of many types of policy documents, and its scope extends to provincial and local governments. More important, there is provision for appeal to the Supreme Administrative Court. This Court was created as a strong, independent arm of the Council of State in 1976, and from its inception has been headed by a judge who is likely to give a liberal interpretation to the Act. The broadness of the exemptions not only gives officials and ministers greater discretion, but also gives the Court greater scope for developing either a restrictive or liberal interpretation of the Act. Hence the Act's success will largely depend on the independence and views of this new appeal body, which has the power to make final decisions and to order the production of documents.

An interesting provision in the Act—and an unusual one even for the Netherlands—is that the government must periodically report to parliament

<sup>&</sup>lt;sup>18</sup>Quoted in a recent letter to the author from Dr. Leo Klinkers, who wrote a dissertation on public access in the Netherlands.

on the Act's operation. After three years, and every five years thereafter, the Ministers of General Affairs and the Interior must prepare a report which incorporates the findings of government bodies, scholars and representatives of the media and public service organisations on the implementation of the Act.

## Canada

Because Canada is a federal state, each of the provincial governments has its own administrative structure, and each has the power to control public access to its own administration. Since the provinces have inherited and operate under basically the same parliamentary system as that of the federal government, their tradition of administrative secrecy has been much the same as at the federal level. Yet they have less reason for secrecy, because they are not responsible for foreign affairs, defence or national security.

Perhaps for this reason, two of the provinces—Nova Scotia and New Brunswick—have already adopted access laws, and in the most populous province, Ontario, a commission on freedom of information and individual privacy has been studying the subject and is likely to recommend such a law.

### Nova Scotia

When Nova Scotia proclaimed its Freedom of Information Act in November 1977, it became the first province, and the first jurisdiction in the Commonwealth, to establish a public right of access to government documents. A noteworthy feature of this Act is that it also incorporates a right to personal privacy regarding government-held information. It provides the right to inspect, correct, and limit distribution of information contained in personal files. Such information may not be disclosed, even to another arm of government, without the consent of the person concerned. The Act further provides that any agency of government must disclose the existence of all data banks where such information is kept, and it prohibits the selling or renting of a person's name or address for mailing without permission.

Another unusual feature of the Act is that it gives a list of types of information that must be made available, as well as a list of exempt categories to which the public may not have access. In a case of conflict between the two lists, however, the secrecy list takes priority. Also, most of the secrecy exemptions are couched in broad language, such as information that 'might' (rather than 'would') influence particular negotiations, or 'would be likely to' (rather than 'would') disclose a particular type of information. For these reasons, the first reading of the Bill produced an outcry from some citizens' groups, who feared that information which had been made available in the past might now be withheld. The legislature therefore passed an amendment providing that the Act would not restrict access to material that had been

available 'by custom or practice' in the past.14

The Act does, however, contain some strong provisions. For instance, a written request for information must be answered within fifteen working days. If only part of the information requested is exempt from disclosure, the remainder must be disclosed. If a written request for information is denied, the applicant must be advised in writing of the reasons and of the appeal procedure.

The most controversial aspect of the Act is the mechanism for appeals. An appeal must first go to the deputy head of the department, with a further appeal to the minister. If the minister upholds the denial, an appeal may be taken to the legislature, where it must be presented by a member. The theory behind this procedure is that it is supposed to preserve ministerial responsibility to the legislature, while an appeal to the courts is said to interfere with ministerial responsibility. But it is obvious that the minister will be inclined to uphold the decision of his own deputy head, and indeed will very likely have influenced the decision in the first place, so that in a sense the minister is a judge in his own case. Furthermore, if the government is supported by a majority in the legislature, an appeal to that body is not very likely to overturn the minister's decision. This appeal procedure vitiates one of the main objects of the right to force the production of documents: to prevent a minister from withholding information for personal or party advantage, or to protect his officials rather than the public interest. Nova Scotia's government is dissatisfied with the procedure and is likely to propose its amendment.

#### New Brunswick

New Brunswick's Right to Information Act was approved by the provincial legislature in June 1978, but had not been proclaimed by October 1979. An unusual feature of this Act is that it requires a request for information to go to the appropriate minister. An appeal from his decision may go to either the ombudsman or to a judge of the Supreme Court. Where the appeal goes to the ombudsman, he will, in accordance with the usual powers of an ombudsman, make a recommendation to the minister, who must again review the case and make another decision. If still dissatisfied, the applicant can then appeal to a judge of the Supreme Court who has power to order the minister to grant the request for information.

It can be seen that this procedure has the essence of the Scandinavian one, by allowing appeals to go to either the ombudsman or the courts. However, it does not make use of the ombudsman's normal functions to avoid a large number of appeals going to the ministers and to the courts. The ombudsman normally receives complaints against officials and makes

<sup>&</sup>lt;sup>11</sup>See Tom Riley, "Freedom of Information: The N.S. Law", Civil Service Review, Vol. 50, No. 30 (September 1977), 29.

recommendations to them, their superiors or the minister before the minister becomes concerned. Often a case is settled without the minister having to become involved. The requirement that a written request for information must go to a minister is severely limiting, and is likely to overload the minister. Moreover, since an appeal to the ombudsman will involve the minister in making a decision on the same case twice, applicants are likely to short-circuit the cumbersome ombudsman route and go directly to a Supreme Court judge, where they have hope of getting a favourable final determination much more quickly. If the requirement that a request must go to a minister were removed, the burden on ministers would be lifted, the ombudsman would revert to his normal role in handling complaints, and the number of appeals going to a judge would be greatly reduced.

# The Federal Government

Canada's federal government is also likely to have an access law very soon. In December 1975 a parliamentary committee tabled a report approving in principle the concept of such a law. This report was approved by the House of Commons in February 1976, and in June 1977 the former Liberal government committed itself to introducing some kind of Bill on the subject by issuing a Green Paper, Legislation on Public Access to Government Documents, which presented arguments for alternative provisions in such a Bill.

The tenor of the discussion in the Green Paper, however, indicated that the government was likely to introduce a weak law. Thus, the document favoured a broadly worded list of exemptions and opposed a right of appeal to the courts, even though such a right is an integral part of the laws in Scandinavia and the United States. For this reason, the Green Paper has been strongly criticised, particularly by the Canadian Bar Association and by a research study prepared for it by Professor Murray Rankin.<sup>16</sup>

In December 1977 the Green Paper was referred for study to the Committee on Regulations, and in June 1978 the Committee reported in favour of a strong law.<sup>17</sup> It proposed strong enforcement provisions comparable to those in the American law, and it disagreed with the broad wording of the Green Paper's exemptions and its preference for ministers making final decisions on appeals. Thus it opposed the prefacing of each exemption by the word 'might'. The Green Paper had suggested an exemption for documents the disclosure of which "might be injurious...". The Committee

<sup>&</sup>lt;sup>15</sup>Issued by Honourable John Roberts, Secretary of State (Ottawa: Supply and Services Canada, 1977), pp. 39.

<sup>&</sup>lt;sup>16</sup>T. Murray Rankin, Freedom of Information in Canada: Will the Doors Stay Shut? (Ottawa: Canadian Bar Association, August 1977), pp. 155.

<sup>&</sup>lt;sup>17</sup>Canada, Parliament, Joint Committee on Regulations and Other Statutory Instruments, *Minutes of Proceedings and Evidence*, Issue No. 34, Third Session of the Thirtieth Parliament, 1977-78 (June 27, 1978), pp. 3-12.

felt that this test was too broad and recommended that the wording should instead be "could be reasonably expected to be..." It also proposed a more restricting wording for each of the exemptions, and on the question of appeals, it proposed a combination of two of the alternatives discussed in the Green Paper: an information commissioner and appeal to the courts. The Information commissioner would have only an advisory power, like an ombudsman, but if the commissioner's recommendation that a document should be released was not accepted by a department or minister, an appeal could be made to the courts for a final decision. The advantage of having an information commissioner as an intermediate step is that he would settle most cases before they went to court, thus saving time and money. In support of a final appeal to the courts, the Committee agreed with Prof. Rankin's contention that

no constitutional, legal, or practical impediment stands in the way of judicial involvement in the adjudication of freedom of information questions, and that the argument that ministerial responsibility precludes it is a time-worn dogma that collapses upon an examination of English and Canadian constitutional precedents. His study concludes that to hand the final decision on disclosure of information to the unreviewable discretion of a Minister "who is hardly a disinterested party" would make a sham of any system of access to Government documents.<sup>18</sup>

The government later announced that it planned to introduce an access Bill in parliament but had not done so by the time of its defeat in May 1979. Earlier, however, it had sponsored the passage of the Canadian Human Rights Act in 1977, which went into effect in March 1978. Part IV of this Act gives citizens the right to inspect personal files that the government may be holding on them, and to file a correction or counter statement to any information on file. A file may be withheld if its subject matter concerns any one of a long list of exemptions, but there is provision for appeal to a Privacy Commissioner who, like an ombudsman, can make a recommendation. Also, in April 1978 the government introduced a Bill, based on a report by a committee of senior officials, 19 to create a general ombudsman plan like the ones now installed in all provinces except Prince Edward Island. Under this Bill, the Privacy Commissioner would have become an assistant ombudsman. However, the Bill had not been approved by the time of the government's defeat.

In October 1979 the new minority Conservative government, headed by Prime Minister Joe Clark, introduced a freedom of information Bill

<sup>&</sup>lt;sup>18</sup>Canada, Parliament, Joint Committee on Regulations and Other Statutory Instruments, op. cit., 9.

<sup>&</sup>lt;sup>19</sup>Government of Canada, Committee on the Concept of the Ombudsman, *Report* (Ottawa, July 1977), pp. 69.

that incorporated the main proposals of the Committee on Regulations, thus ensuring a relatively strong access law. Since the government has given the Bill a high priority in its legislative programme, it is likely to be approved soon by parliament, with minor amendments to strengthen it, and to go into effect in 1980.

### Australia

A new Labour government in 1972 began a trend towards greater governmental openness in Australia. It appointed an interdepartmental committee of officials to study the problems of freedom of information, and the committee's report in 1974 favoured a freedom of information law similar to that in the United States.<sup>20</sup>

After Labour's loss of power, some of the initiatives towards greater openness were abandoned. Its successor government did, however, follow the lead of most of the Australian states by creating the office of parliamentary ombudsman in 1976. It also reappointed the interdepartmental committee to reconsider its earlier report, and the committee issued a second report in 1976.<sup>21</sup> As might be expected from a committee of officials, the proposals made in its reports were for a rather weak access law, though as a result of public discussion and criticism the proposals made in the second report were somewhat stronger.<sup>22</sup> These proposals then became the basis for a Bill introduced by the Commonwealth government in June 1978, the Freedom of Information Bill 1978. The government also introduced a related Bill, the Archives Bill 1978, which limits the withholding of most secret documents to thirty years.

Meanwhile, the Royal Commission on Australian Government Administration had commissioned a study on access to documents, and this was published as an appendix to the Commission's report in 1976, the same year as the second report of the interdepartmental committee. The appendix was in the form of a minority report from Commissioner Paul Munro, and presented a well-argued justification for a much stronger law. It also contained a draft Bill modelled closely on the U.S. Freedom of Information Act, but with adjustments to suit a parliamentary system, and included a lengthy

<sup>21</sup>Attorney-General's Department, Report of Interdepartmental Committee, *Policy Proposals for Freedom of Information Legislation* (Canberra: Australian Government Publishing Service, 1976).

<sup>22</sup>See John McMillan, "Freedom of Information in Australia: Issue Closed," *Federal Law Review*, 8 (1977), pp. 379-434; and "Making Government Accountable—A Comparative Analysis of Freedom of Information Statutes," *New Zealand Law Journal* (1977), 248-256, 275-280, 286-296.

<sup>&</sup>lt;sup>20</sup>Attorney-General's Department, Report of Interdepartmental Committee, *Proposed Freedom of Information Legislation* (Canberra: Australian Government Publishing Service, 1974).

explanation and justification for each of the Bill's provisions, prepared by John McMillan.<sup>23</sup>

An important argument contained in the minority report, and illustrated in its draft Bill, is that any broad secrecy exemption based on a few general words, such as 'foreign relations' or 'law enforcement' will necessarily cover a large number of documents that need not be secret and ought to be released. Any such exemption should therefore be qualified by a statement of the types of documents that it does not cover, as was done in the American Freedom of Information Act by the amendment of exemption numbers 1 and 7 in 1974, and 3 in 1976. Also, officials ought to be given the permissive power to release documents, even if they seem to be covered by a broad exemption, when this clearly does no harm to a public or private interest.

As in Canada and the United Kingdom, the supporters of a strong law have formed a lobbying organisation, the Freedom of Information Legislation Campaign Committee, which has representatives from many important interest groups. It has been pressing for a strengthening of the 1978 Freedom of Information Bill through amendments proposed in parliament. However, far reaching amendments are not likely to be accepted by the government.

The 1978 Bill contains two features which may be regarded as improvements over the American legislation. The first is the more restrictive wording of some of the exemptions. For instance, the first exemption covers documents if their disclosure 'would' (rather than 'might') prejudice the security, defence or international relations of the Australian Commonwealth or its relations with any of its states. Others exempt documents only if their disclosure "would be reasonably likely to have a substantial adverse effect", or some similar wording. The second feature is that provision is made for final appeal to Australia's Administrative Appeals Tribunal, which was created in 1975, rather than to the ordinary courts. This will have the advantages of greater speed, less cost and more expertise on administrative matters.

Despite these advantages, critics of the Bill claim that other weak features, taken together, virtually emasculate it. Thus the Freedom of Information Legislation Campaign Committee has issued a 'Briefing Kit' which lists ten major faults of the Bill and explains several additional shortcomings, including some important omissions, in a clause-by-clause annotation of the Bill.<sup>24</sup> It concludes that "All of the major faults (and most of the equally grave ones outlined in the attached annotation) are simply the harvest of Public Service timidity and conservatism."<sup>25</sup>

The Australian States

As in Canada, the proposal for a federal law on access has stimulated

 <sup>&</sup>lt;sup>28</sup>Royal Commission on Australian Government Administration, Minority Report, Appendix 2.A., volume 2 (Canberra: Australian Government Publishing Service, 1976).
 <sup>24</sup>As published in Rupert Newsletter, 14-16 (April-August 1978), pp. 4-5.
 <sup>25</sup>Ibid., 4.

interest in similar laws at the state level. For instance, in October 1977 the Attorney-General for South Australia, Mr. Duncan, told a public meeting organised by a freedom of information lobby that his state government was in favour of legislation on the subject but had been waiting for the federal government to produce its legislation, since his government believed that it would be desirable to have uniform legislation throughout Australia.<sup>26</sup> However, he did not say why his government believed that there should be uniform federal and state legislation. One of the advantages of a federal system is that there can be experimentation with different forms of new laws or institutions among the states or provinces to see which is best. Also, a radical new law or institution can be more safely tried out in a single province or state. Thus the ombudsman institution was introduced first at the lower level in both Australia and Canada.

There has also been an official proposal for a public access law in New South Wales. A commission appointed to review the state's administration issued an interim report in November 1977 which made a strong case for such a law.<sup>27</sup> It proposed that, as the next step, it should prepare a draft Green Paper on public access to state files, incorporating a draft Bill, as a basis for public discussion.

The interim report also contained an interesting account of separate surveys of public and civil service attitudes that the commission had conducted. Respondents were asked to what extent they believed members of the public should have access to state government files. In the public survey, 65 per cent thought members of the public either definitely should have access to such files or an independent organisation should decide, while only 48 per cent of the civil servants thought this. Only 18 per cent of the public thought the government organisation concerned should decide, while 30 per cent of the civil servants thought this. It is likely that there would be a similar difference between public and civil service attitudes in other jurisdictions.

# LESSONS FROM THE EXPERIENCE WITH ACCESS LAWS

It is clear that, because of the strength of the tradition of discretionary secrecy, most democratic countries are in need of a strong law to reverse the principle that 'Everything is secret unless it is made public by permission' to 'Everything is public unless it is made secret by law'. The lesson of the Swedish experience is that it is clearly quite possible to have a system where the principle has been reversed by law, and to build up a strong tradition of openness, without the wheels of government grinding to a halt. On the other

<sup>26</sup>Story in Advertiser, November 1, 1977.

<sup>&</sup>lt;sup>27</sup>Review of New South Wales Government Administration (Peter Wilenski, Commissioner), *Interim Report: Directions for Change* (Sydney: N.S.W. Government Printer, 1977), Chapter 21.

hand, experience elsewhere, especially in the United States, teaches us that where such a tradition of openness does not already exist, the full establishment of the principle of public access will require a radical change in law, practices and attitudes. Although practices and attitudes may not be changed sufficiently by the mere passing of a law, this is a necessary condition for the change. The adoption of a law which clearly declares a reversal of the principle of secrecy has great symbolic and dramatic value in altering both public and official attitudes. But as shown by the failure of the first American law of 1946, and the limited success of the law of 1966 until its amendment in 1974, such a law will not succeed unless it contains strong provisions for its enforcement. Public officials are too used to the old system of discretionary secrecy under which they arbitrarily withhold information for their own convenience or for fear of disapproval by their superiors, and will not change their ways unless they are required by law to do so.

Another lesson of experience elsewhere is that under a parliamentary system, where the executive government controls the introduction of legislation, the government will resist sponsoring a strong law because this will limit its own powers, and because it finds the present system of discretionary secrecy so much to its own advantage. It is significant that all of the governments in parliamentary systems that have sponsored or drafted an access law have produced weaker versions than the laws of Sweden or the United States. Such governments are likely to resort to the spurious argument that a right of appeal to the courts will interfere with ministerial responsibility to parliament. Yet such a right increases rather than interferes with ministerial responsibility because it prevents the ministers from permanently hiding information for personal or partisan advantage. And from a broader point of view, a strong access law forces them to release more information about all of the activities for which they are responsible, thus giving parliament, and through it the public, a better basis for controlling the government.

Experience elsewhere also shows that a strong and successful law must have five main features. First, it must unequivocally declare that the general principle in government administration is to be open public access to information and that secrecy is the exception. Second, it must facilitate full and easy public access, for instance by not limiting requests to specific documents (as in Denmark and Norway) or to citizens with a personal interest in a case, and by requiring public registers of all documents and low fees for searches and copies, with the fees waived if the request is for a public purpose. Third, it must list narrowly and specifically the types of documents that may be kept secret, must specify how long they are to be kept secret, must permit earlier release if this does not harm the public interest, and must require non-secret parts of documents to be released. Fourth, it must contain strong provisions for the enforcement of access, such as a limited time for replying to a request or appeal, and requiring reasons for a refusal, as well as penalties for non-compliance. And fifth, it must provide an easy appeal to an independent

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authority, including a final appeal to the courts, with the costs recoverable if the applicant wins.

Moreover, if there is to be full provision for openness, the scope of the law should be broad. Unless separate laws are passed for the purpose, it should contain provisions for access to personal files, and for their correction and control, for open meetings of governmental bodies and for extending its scope to cover state and local government. Finally, existing laws must be made to conform with the new access law. Because of cabinet control over the drafting of legislation in parliamentary countries, even the statutes are slanted in favour of discretionary secrecy. For example, in Ontario a research group has found that, of some 500 provincial laws at present in force, one in every four contains some provision for administrative secrecy, and twenty-nine of them contain broad secrecy language.<sup>28</sup> Hence, if a parliamentary country adopts an access Act, either its existing laws and regulations should be reviewed and their secrecy provisions brought into conformity with the spirit of the new Act, or the Act should be made to override these provisions.

# Democracy and Secrecy

A totalitarian government finds it easy to maintain secrecy. It does not come into the open until it chooses to declare its settled intentions and demand support for them. A democratic government, however, though it must compete with these other types of organisation, has a task which is complicated by its obligations to the people. It needs the trust of the governed. It cannot use the plea of secrecy to hide from the people its basic aims.

— The Franks' Committee, U.K. 1972

<sup>&</sup>lt;sup>28</sup>Ontario Commission on Freedom of Information and Individual Privacy, Newsletter No. 3 (August 1978), 9.

# Secrecy and Publicity in a Parliamentary Democracy—the Case of the Netherlands

**B.J.S.** Hoetjes

IF ONE were to write exclusively on those things in Dutch government which remain secret, the following pages would have to remain blank, since, by definition, secrets are unknown. In order to throw some light on the problems of secrecy it seems more fruitful, therefore, to turn our attention to the limits of secrecy and publicity and their conflicting interests in Dutch society and government.

Secrecy and publicity are not confined to the realm of government—they may also characterise a society at large. In most, if not all, societies most events and phenomena are ignored by most people and seen, noticed and known only by a few. There are several reasons for this. Ignorance may be due to social and cultural distance: a person will be highly interested in. and therefore better informed about, many events in his family circle, home town or village, but he will ignore most phenomena at the national or international level, because he feels unrelated to them. A low level of education and also a highly specialised education will make a great deal of information incomprehensible, and therefore inaccessible to a person. because it is either too complicated or outside the limits of one's own specialised interest. Also, habit and prejudice may form a filter in people's subconsciousness, through which information is selected, and, to a great extent, excluded and ignored. Indeed, when the human mind is confronted with an increasing flow of information, some selective mechanism, excluding 'unimportant' things, might be essential for mental survival.

However, aside from voluntary or unconscious ignorance, information may be kept away from people wilfully and consciously, *i.e.*, by making and keeping things secret.

There may be various reasons and motives behind secrecy. In the first place, a feeling of shame may be the reason: one keeps away from others those things, which, one expects, will be shocking to others and therefore disapproved. This expectation may be right or wrong, but that is not the main point: before any question arises, one hides a thing in secrecy in order to prevent social disapproval and punishment.

Secondly, the desire to maintain a certain independence towards other

people may explain secrecy—especially in strictly personal matters the concept of 'privacy' and the legislation in the Netherlands, protecting the personal, private sphere and keeping private information out of the public's reach, is based on this desire.

Thirdly, and most importantly for our topic, the desire to exert power or influence may be the motive behind secrecy: one may enhance one's power/influence by keeping certain actions and intentions secret altogether or by revealing information only partially or at one specific moment (e.g., using surprise tactics). Here, it becomes difficult to draw the line between secrecy and manipulation, i.e., a wilful distortion of reality intended to influence the observer of this 'reality'. For example, a civil servant, advising his minister, may withhold information and, by doing so, he may reduce the number of alternatives for the minister's decision, and influence this decision in the direction he, i.e., the civil servant, prefers.

Information about policy problems, available alternative courses of action and the consequences of these alternatives, political as well as economic and social, provides the raw material for decision-making and the better the raw material, the better, *i.e.*, the more self-conscious, responsible and deliberate, the decision will be.

## PARLIAMENTARY DEMOCRACY AND PUBLICITY

The more a public office holder is trusted, the more his authority is taken for granted and the less he is inspected and supervised, the greater will be the chances of secrecy and manipulation. Therefore, institutionalised opposition, public accountability and publicity will minimise this chance, and the more so, when they support each other. More particularly, opposition in parliament will only be effective when governmental accountability to parliament also implies a duty for the government to provide all the desired information. According to Art. 104 of the Dutch Constitution, the ministers have to provide the desired information to the Estates-General (i.e., the parliament), unless this may be held to damage the national interest. The government has to justify its actions publicly, since, according to the constitution, the meetings of parliament shall be held in public (Art. 111).

As far as the relationship with the general public is concerned, the government is constitutionally bound to publish all laws and regulations in the 'Staatscourant' which can be obtained by every citizen. Also, the proceedings of all courts of justice are held in public (except in legally circumscribed cases, where the interests of children/minors or national security are involved).

As a logical consequence of this governmental publicity, it is assumed that every Dutch citizen knows the law—ignorance is not acceptable as an excuse. However, in spite of the high education and almost complete literacy of the population, not every Dutch citizen knows all the rules of the law—in fact, only the lawyers do. There is a wide gap between publicity on

the one hand and knowledge and familiarity with public affairs on the other, and it is felt that communication, information and education in public affairs should bridge this gap.

Still, there is a widespread reluctance and even resistance against direct governmental activity in the field of communication and information in the Netherlands: the fear of manipulated information and government propaganda, and the desire to keep the mass media independent are deep-rooted. Press, radio and television are in private hands (either profit-oriented or non-profit organisations) and organisationally as well as economically they are highly, although not completely, independent from the government.

Government, e.g., the prime minister, will rarely, if ever, address the people directly by press, radio or television. The 'Staatscourant', which publishes the laws and regulations, cannot stand a comparison with the newspapers-it is a book-of-law in the form of a daily paper more than anything else—and the broadcasting time on radio and television that is used by the government, is very limited in the first place and, secondly, it is mainly handed over to the political parties for their propaganda. The very little radio and television time, used by the government itself, is devoted completely to non-controversial matters like rural extension services, social security or credit facilities offered by the government. For the contacts between government and the mass media there are public relations/information services in each ministry as well as a general governmental information service. These services are meant to 'publicise, explain and elucidate' the policy decisions of the government, but they are not to applaud or propagate government policy among the citizenry. Even the notion of 'public relations', i.e., systematically improving the relations between the government and those groups on whose opinion and goodwill the government, as an organisation, depends, is widely held in distrust. Every attempt by the government to influence the citizens directly—by-passing parliament—is generally considered to be incompatible with the Dutch parliamentary system.

Thus, the mass media in the Netherlands are quite independent from the government. Also, there is considerable diversity among the mass media, reflecting the social, religious and political diversity in this small country (14 m. inhabitants): 7 national newspapers and 9 national broadcasting organisations, each of them quite distinct in its views and identity, exist side by side with numerous regional and local newspapers and radio stations. The government, on its part, explicitly recognises and appreciates this diversity, even to the extent of subsidising newspapers which are in financial difficulties. Although no political strings are attached to these subsidies, there is considerable uneasiness about this financial involvement of government in media affairs. Legally, the independence of the Dutch press is guaranteed by the constitution (Art. 7 concerning the freedom of the press) and the European Convention for the Protection of Human Rights (Art. 10 concerning the freedom to collect information).

By the way it should be noted that the influence of the media on government policy has its limits as well. Although the media are highly effective in exposing official misconduct and urging parliament (or provincial/municipal councils) into action on matters of public indignation, the daily newspaper comments on matters of public importance (editorials) are hardly read by the general public. For most readers, government, politics and administration are completely uninteresting compared with the sports page.

#### LIMITS AND SHORTCOMINGS OF PUBLICITY

Education, literacy, publishing and mass media activity have reached a very high level in this prosperous, privileged, humid and chilly corner of northwestern Europe. Still, the average Dutch citizen does not use all the available information all the time—one simply cannot always be interested and informed about everything. The demand for more information about public affairs originates from a small group in the population, namely, the politically interested citizens. However small this group may be (certainly not more than 10 per cent of the population), for the viability of the governmental system it plays a crucial role; therefore, its voice should be, and has been, heard.

The amount of information on public affairs, large though it may be, is not unlimited; in spite of the public accountability of government at the national, provincial and local level, much escapes from the public's eye. First of all, this is caused by the phenomenon of delegation: the more complicated and comprehensive government policy has become, the more regulating and decision-making has been shifted, 'delegated', to civil service agencies. However, the civil servants are not legally responsible for policy decisions: only the (under-)ministers can be held responsible for policy-making vis-a-vis parliament. In this respect the Dutch situation is different from Sweden, where each individual civil servant has a public responsibility for his decisions and where, consequently, the role of parliament in governmental affairs is much more limited; in fact, the Swedish parliament confines its discussions to current political controversy. In the Netherlands, however, the (under-) minister in his role of political executive is held responsible for everything that goes on inside his ministry. Political executives are supposed to know, supervise and direct every action by any of their numerous officials and these officials, in their turn, are responsible only to their political executive; they don't have to answer anyone else's questions and it is their duty to keep all official matters secret. In actual practice, of course, a minister is unable to know everything that goes on within his ministry and, as a result, a lot of decision-making, especially 'delegated' decisions, have become completely inaccessible to the outside world.

At the same time, it should be granted that official resistance against attempts to change this situation is quite understandable, since the present

situation at least offers formally clear lines of exclusive responsibility. A civil servant would be in a rather uncomfortable position if he would have a dual responsibility, *i.e.*, to the public as well as to his political executive. Also, this inaccessible decision-making, which takes place within governmental services/ministries, rarely creates difficulties as far as publicity is concerned—the more complete the public's ignorance, the less a need for information and publicity. For a public servant to bring out all possibly relevant information without the public asking for it, would require quite a change of mentality.

Secrecy and publicity become an issue in two possible situations. First, there is the possibility that a citizen or a group of citizens disagrees with a governmental decision. In such a case there is a procedure for appeal to higher authorities and/or a court of appeal, and there is a system of elaborate legal rules to deal with such a possibility; also, the aggrieved citizen may turn to party politicians or mass media for assistance.

Secondly, however, there is the situation where a citizen requests a service from the government (e.g., a licence, a subsidy) and all he can observe after submitting his request is the final decision (refusal or approval). Especially this type of 'interested citizen' feels a great need for information about what went on before the final decision—which officials took care of his request, why did it take such a long time, how was the request dealt with, what motives led to the final decision, etc. Asking for this kind of information, a citizen may run into a wall of secrecy, which is certainly, not inevitably, built on official ill-will towards the citizenry. There are other reasons for this non-responsiveness: formal decision-making in bureaucratic administrative bodies has been split up into many parts, so that every single official is concerned and informed only about a very limited aspect of the matter: he is simply unable to inform a citizen about the whole process of decision-making. Aside from that, he has no duty to provide information to anyone except his formal superiors, and ultimately, the politically responsible executive. The Dutch constitution gives the citizen a right to present requests and petitions to the authorities, but a right to receive an answer is not mentioned nor is there a constitutional obligation for the government to provide an answer. At this point politicians as well as lawyers and public administration experts have argued strongly, and probably successfully, in favour of changing the constitution.

There are more limits to publicity in Dutch government. The citizen can try to obtain information through his representatives in parliament (or provincial/municipal councils, as the case may be) but there he will find the political parties standing in his way. According to the constitution, there is a direct, individual, relationship between the citizen and his representative in parliament; political parties do not exist in any constitutional sense. Still, it is they who mediate between the citizen and the representative in actual practice. A citizen votes for a party list (he does not know the candidates

personally) and a representative in parliament operates along party lines (he owes his position to the party and he will therefore conform to party discipline). Now, the political parties are not obliged to make all their information public or to make it available to interested citizens—they are completely free to withhold information or to select it according to their views.

Even in the relationship between parliament and government, publicity has its limits. The plenary sessions of parliament are held in public, although committee meetings may be held behind closed doors if the subject requires (e.g., personal or security matters). The formation of cabinets, however, which is a crucial decision-making process involving the party leaders in parliament, takes place in almost complete secrecy. Also, the cabinet meetings are kept secret: no agenda or reports/minutes are published. Only since 1970 has it become a custom for the cabinet to inform the press and television journalists. This custom, however, has no legal basis whatsoever; availability of information about a minister's activities depends on his/her spontaneous talkativeness and the vigilance and diligence of parliament. Finally, the contacts between the cabinet and the queen, who is constitutionally 'immune' as the head of state, as well as with the queen's advisers, e.g., the Council of State which offers advice on all legislative proposals, are kept secret altogether.

#### RECENT CHANGES

Arguments for publicity and against secrecy have been heard for a long time. In the 19th century, the famous liberal Prime Minister Thorbecke was a strong spokesman for publicity: he was the main force behind the legal and constitutional changes in that direction. The provisions concerning publicity and information in the Dutch Constitution—(1848), the Provincial Act (1850) and Municipal Act (1851) are due to him.

In the 20th century, considerable criticism of the 'bureaucratic jungle' (morass or swamp would be a better term in the case of the Netherlands) remained, but only after 1960 it gained more ground, especially when the demand for 'democratisation' of universities and other public bodies became the issue of the day at the closing of the sixties.

In 1968 Prime Minister De Jong installed a committee to advise the government in the field of publicity and information. This committee submitted its report 'Openheid en Openbaarheid' in 1970—it recommended a basic change away from the current principle of 'secrecy, unless publicity is necessary' to the principle of 'publicity, unless secrecy is necessary'. The committee argued for new legislation in the field of governmental and administrative publicity. A new law should oblige the government to provide, on its own initiative, information about its policies, about the non-official advice in matters of public policy, as well as about its policy intentions for

which public discussion is desirable; aside from this so called 'active publicity', the citizen should have a right to be informed about governmental/administrative actions on his request ('passive publicity').

After receiving the report and submitting it to parliament, the cabinet (-De Jong) declared its intention to propose legislation on the matter of 'active publicity'. The notion of 'passive publicity' was left out because there were objections from within the cabinet and the Council of State against the highly general 'right to be informed' for any citizen (at least, so it appeared). Parliament was quite satisfied with the committee's report, but it took several years, and two more prime ministers, before a legislative proposal was presented to parliament by the cabinet (den Uyl) in 1975.

The proposal for a Publicity of Administration Act—1975 attempted to relate the interest of publicity to other, sometimes conflicting, interests, like the need to integrate all the interests involved in a policy question according to the views of the government, the need to coordinate the policies of the various ministries and the constitutional necessity of unambiguous accountability of governmental policy towards parliament. Dealing with these problems, the Act has looked for support and guidance in the Scandinavian legislation on publicity in public affairs—no other country in the world has legislated on this matter. The Dutch Act is more moderate than the Swedish Act, where the role of parliament in administrative matters has been very limited for a long time and where the press is considered to be a 'constitutional force', but it goes somewhat further than the Danes, the Fins and the Norwegians.

The exact wording of the 'right to be informed' will be left to administrative regulation (algemene maatregel van bestuur), taking into account a number of principles, e.g., the exclusion (from publicity) of information about individual official opinions on policy matters (these are not excluded in Sweden) and information which is incomplete or not yet finalised, and the inclusion of information about available alternative courses of actions and the motives for a decision. Also, the concept of 'official document' is important in this context, even though 'information' covers more than written documents only. A piece of writing becomes an official document when it has been sent or handed over formally and can be assumed to have been received by the addressed person. A piece of writing, which has not been formally sent and/or received, will thus not qualify as an official document and will be excluded from publicity.

The proposed Act was studied by a committee of parliament, which reported on the matter in March 1976. At that time, the government was supported by the socialists (Labour Party), the radicals (PPR), the two Christian-democratic parties (Roman Catholic—KVP, and protestant—ARP) and the leftist liberals (D'66), while the conservative-liberals (VVD), one protestant party (CHU) and splinter groups on the left and the right opposed

the government; the committee 'openheid en openbaarheid' had been sponsored by the Roman catholic-protestant-conservative liberal (KVP-CHU-VVD) Cabinet-De Jong. The proposed Act, therefore, could muster a large majority of parliament in 1975. Objections and hesitations were voiced mainly by the KVP and the VVD, although they were basically in favour of the Act; the other parties were either fully satisfied (Labour, ARP) or wanted the Act to go further (D'66, PPR, leftist groups) without being against it as it was. The leftist liberlals (D'66) did not want to leave the exact wording of the 'right to be informed' to administrative regulation: this procedure might create the impression that government is in favour of publicity, but leaves open numerous possibilities for it to withdraw into secrecy.

Responding to the comments from the parliamentary committee, the government made some minor changes in the Act: it now covers municipal, provincial as well as national administration and the notion of a permanent supervisory board on publicity was left out. In February, 1977, parliament (i.e., the second chamber) discussed the proposal in its public, plenary session and the proposed Act was adopted without the taking of votes (February, 17, 1977). The first chamber of the Dutch parliament discussed the matter in the course of 1978 and agreed with the proposal by the end of that year (November 7, 1978). Since that day, the Dutch have a law on publicity in public administration. The administrative regulation concerning 'passive publicity' is not yet finished at this moment.

Around the same time the cabinet came up with the idea of adding an Article to the constitution concerning publicity in public affairs. This Article, completing the legislative provisions for publicity, should oblige government to act according to the legal rules of publicity. The Council of State was in favour of this idea (January, 1977), but the special committee of the second chamber discussed the matter only at the end of 1978—after a cabinet crisis and the formation of a new ministry of Christian-democrats (CDA) and conservative liberals (VVD).

The majority of parliament is in favour of the new Article (June, 1979), but in the plenary session there has not yet been a discussion or vote on this subject.

Concluding, we may safely predict that the Netherlands will be the fifth country in the world where publicity in government has a legal as well as a constitutional foundation. The demands for 'democratisation' of the late sixties have receded, but there is a still widespread and urgent desire for openness in public matters. In matters of 'ecology', many citizens are concerned and sensitive about decisions like the construction of roads, the location of industries and nuclear plants, and they have a strong interest and desire for information. Also, some sensational controversies about the (alleged) misconduct of public leaders (Prince Bernhard's involvement in the Lockheed affairs, the hidden past of the protestant leader Aantjes in World War II) have underlined the need for vigorous, independent mass media in

the Dutch parliamentary system. This need for independent information has now found its way into legislation.

This does not imply that government and administration in the Netherlands now find themselves in a 'glass house'. A great deal of information still escapes the public eye, and although this may be undesirable from the viewpoint of the journalist or the interested citizen, there may be good reasons for it from other viewpoints like the protection of private persons or national security. The 'black box of government' has not become completely transparent, but, as things stand now, the rights and duties of information for officials and citizens have been more clearly defined in the law; they are no longer completely left to the whims of convention and discretion.

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# Access to Administrative Information

The Netherlands Law on the Access to Official Information was passed in November 1978. Article 1 says: 'a request for information ... shall be complied with unless there is an objection to this on any of the grounds referred to in Article 4'. Article 4 says that the information ... shall not be divulged if it might: (a) endanger the unity of the crown, (b) damage the security of the state, or if it concerns, (c) data of enterprises and production processes insofar as they have been furnished to the government confidentially.

# Government Secrecy in Canada

# Gordon Dohle

TTHE philosophical level, the practice of government secrecy in Canada is a compromise between the concept of liberal democracy and the tendency to oligarchic behaviour in the British parliamentary tradition. The compromise is an unstable one, beset by the constant tension between theory and practice. As a modern liberal democracy, the political culture of Canada is said to be based on a belief in 'popular sovereignty'—"a form of government which attempts to maximize or 'optimize' the common good by satisfying the needs of as many people as possible"—and achieved through representative government.

In contrast to this belief, however, there exists the practice of 'crown privilege' and administrative secrecy which allows the government to maintain control of information vital to a citizenry concerned with popular sovereignty. It is difficult to comment on, criticise or effect change in policies whose very existence is shrouded in secrecy.

This contrast between theory and practice in the Canadian context arises primarily as a result of historical forces. As a parliamentary democracy in the Westminster model, created by an Act of the British Parliament in 1867, many of the contradictions in that model have been imported and remain firmly rooted in the Canadian consciousness. There is, for example, no scholarly agreement as to whether the Canadian political tradition is based on 'popular sovereignty' or 'parliamentary sovereignty'. Depending on one's interpretation of this important base, the 'right' to information and the practices of administrative and ministerial secrecy take on different meanings.

A modern corollary is that the concept of fiduciary trust inherent in liberal democracy leads in practice to the development of elites whose main activity is to coordinate the interests of the groups they represent with the economic well-being of the system. There is a growing amount of evidence<sup>3</sup>

<sup>&</sup>lt;sup>1</sup>R.J. Van Loon and M.S. Whittington, *The Canadian Political System: Environment, Structure and Process*, 2nd edition, McGraw-Hill Ryerson, Toronto, 1976, p. 78.

<sup>&</sup>lt;sup>2</sup>See D.V. Smiley, *The Freedom of Information Issue: A Political Analysis*, Ontario Commission on Freedom of Information and Individual Privacy, Toronto, 1978, p. 38,

<sup>&</sup>lt;sup>3</sup>See, e.g., J. Porter, *The Vertical Mosaic*, University of Toronto Press, Toronto, 1965; and W. Clement, *The Canadian Corporate Elite*, McClelland and Stewart, Toronto, 1975.

as to the homogeneity of the Canadian ruling elite and their horizontal mobility in sectors including government, business and the academy. To the extent that access to information depends on positions of power there are grounds for believing that knowledge of nominally secret government information is freely available between and amongst these elites.<sup>4</sup>

On balance, most observers of the practice of government secrecy in Canada would agree that:

Governmental secrecy in Canada is based largely on British parliamentary practice: the common law doctrine of crown privilege, the traditions of ministerial responsibility and of an anonymous civil service, the principle of the freedom of the press, the Canadian version of the British Official Secrets Act, and a system of classification for government documents. The prevailing view among scholars is that Canadian public bureaucracies are excessively secretive and that Canada's official information policies reflect traditional concepts and a slavish adherence to bureaucratic secrecy.

Common law traditions of crown privilege recognize the right of the crown to refuse to disclose classified information where it is felt that disclosure would be detrimental to the public interest. The concepts of ministerial responsibility and civil service anonymity have, in part, contributed to the general assumption that all documents are secret unless they are specifically declared to be public. These concepts also mean that opposition politicians are less able to question or criticize public servants than in other systems of government<sup>5</sup>.

This observation is of course tempered by the understanding that *some* degree of administrative secrecy is necessary in order to preserve the anonymity of civil servants, national security, the timing of government action in areas dealing with important economic measures and federal-provincial relations. Nevertheless, the amount of secrecy and the principle by which it is to be administered has become a matter of widespread debate in Canada. As Professor Rowat has put it:

There will always be the problem of drawing a line between the Government's need to deliberate confidentially and the public's need for information. It is simply a question of emphasis. In the past we have been stating the principle the wrong way around: 'Everything is secret unless

<sup>4</sup>Porter, op. cit; Clement, op. cit., and see also C. Campbell and G.J. Szablowski, The Super-Bureaucrats: Structure and Behavior in Central Agencies, Macmillan, Toronto, 1979, and F.C. Engelmann and M.A. Schwartz, Canadian Political Parties: Origin, Character, Impact, Prentice-Hall, Scarborough, 1975.

<sup>5</sup>G.B. Doern, "Canada", in Itzak Galnoor, ed., Government Secrecy in Democracies, Harper and Row, New York, 1977, p. 145-146.

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it's made public,' instead of, 'Everything is public unless it's made secret.'6

Historically, the tradition of secrecy has been associated with crown privilege. As such it was a kind of 'unwritten rule' which was buttressed by the British courts in 1942 and the tradition extended to Canada.<sup>7</sup> Elements of secrecy can however be found embedded in Canadian law as early as 1890 and the Canadian Bar Association in a recent survey lists over seventy separate enactments containing provisions for secrecy.<sup>8</sup> Those having the most important bearing on proposals for freedom of information in Canada include the Federal Court Act, the Official Secrets Act and the Public Service Employment Act.

## THE PUBLIC SERVICE EMPLOYMENT ACT

This Act<sup>9</sup> is a blanket oath of allegiance and secrecy which serves to demonstrate the ethic of secrecy in Canadian government. As a condition of employment all civil servants are required to take the following oath of secrecy:

I... solemnly and sincerely swear that I will faithfully and honestly fulfill the duties that devolve upon me by reason of my employment in the Public Service and that I will not, without due authority in that behalf, disclose or make known any matter that comes to my knowledge by reason of such employment.<sup>10</sup>

The comprehensive nature of the oath, the emphasis on any matter, makes it difficult for any civil servant to disclose any bit of information and serves to justify the actions of those who prefer not to be bothered by citizens seeking information. A parallel oath, taken by members of the Privy Council which includes all cabinet ministers, reinforces the ethic of secrecy:

I will keep close and secret all such matters as shall be treated, debated and resolved on in Privy Council, without publishing or disclosing the same or any part thereof, by Word, Writing, or any otherwise to any

<sup>&</sup>lt;sup>6</sup>D.C. Rowat, "How Much Administrative Secrecy?", Canadian Journal of Economics and Political Science, Vol. 31, No. 4, November 1965, p. 498.

<sup>&</sup>lt;sup>7</sup>Ibid., pp. 482-483. See also T.M. Rankin, Freedom of Information in Canada: Will the Doors Stay Shut? Canadian Bar Association, Ottawa, 1977, pp. 24-30.

<sup>&</sup>lt;sup>8</sup>Canadian Bar Association, Freedom of Information in Canada, A Model Bill, Ottawa, 1979, pp. 49-51.

<sup>&</sup>lt;sup>9</sup>Public Service Employment Act, R.S.C. 1970, c. p. 32, s. 23, Schedule III.

<sup>10</sup> Ibid.

Person out of the same Council, but to such only as be of the Council.<sup>11</sup>

The result of these two oaths taken together is that ministers of the crown can depend on close-lipped servitude from their minions in the development of government policy and have no requirement even to members of their own party in government to disclose the background reasons for any of their legislative behaviour. The principle of a 'loyal opposition' dutifully debating government bills is thus further eroded. Opposition parties in Canada must perforce employ their own talents to unearth and disclose the reasons behind policy decisions.<sup>12</sup>

Authority to disclose information is allowed for in the Public Service Employment Act but it should be noted this is an allowance, not a requirement. In practice it creates specialised propaganda units whose task often appears to be one of maintaining good public relations without disclosing anything of interest to anyone. When civil servants nominally or traditionally authorised to discuss activities in their departments do so without discretion they can be subject to extremely strong pressure. This is particularly true during times of government crisis and during transition periods. Not long after the fecent change in government in Canada, for instance, a memo was circulated warning civil servants to refrain from making policy comments. The contents are instructive in that they reinforce the oath of secrecy and at the same time show the degree of control over information which is wielded by the prime minister's office:

Officials who are not designated to deal with the media as part of their duties, and who receive media inquiries will refer them to public affairs;

Generally officials will not give on-camera or on-mike interviews; Officials who are required to deal with the media as part of their duties or requested to do so by the minister will confine themselves to factual explanations and avoid commenting on or promoting policies;

All public announcements at the national level and all policy or major programme announcements will be made by the minister;

Press releases of such announcements will be cleared via the Director General of Public Affairs and with the Prime Minister's office.

Wherever possible the Prime Minister's office should receive the draft press releases at least 24 hours before their scheduled release.

Scheduled media interviews with national audiences on ranges of subjects going beyond the minister's departmental responsibilities.. are to be coordinated by the Prime Minister's office. 13

<sup>11</sup> The Citizen, Ottawa, June 9, 1979.

<sup>&</sup>lt;sup>12</sup>A document, "Guidelines for the Production of Papers in Parliament", was tabled in he House March 15, 1973.

<sup>13</sup>The Vancouver Courier, August 3, 1979.

# THE OFFICIAL SECRETS ACT

This Act<sup>14</sup> is designed primarily to protect Canada from espionage activities. Although charges under it are unusual, it is important because it invokes heavy penalties for spying and is written so broadly as to

embrace in intent almost any form of information obtained in the course of service or contract of employment, or otherwise, and then passed on without authority to any other person whatever his status and whatever the purposes of the transfer of information may be, however unclassified the information may be, if obtained from sources available because of holding a government position or having a government contract.<sup>15</sup>

A recent comment on the Act sees it as a potentially draconian measure to keep civil servants in line.<sup>16</sup> There is little doubt about the efficacy of such a measure:

Section 4 is drafted so broadly that it could prohibit the communication of any form of information obtained in confidence from any person holding office under Her Majesty. Prosecutions under the act are rare but public servants are conscious of its existence and are no doubt influenced by it. The size of the penalties involved—a maximum sentence of fourteen years—must serve to make public servants cautious.<sup>17</sup>

Perhaps the most telling comment on the inherent ambiguities in the Official Secrets Act is a recent court case in Canada. Peter Treu, a consulting engineer who had been granted a security clearance to receive NATO documents found himself charged under the Act. Treu was subjected to a secret trial, charged with illegal possession and inadequate protection of secret information, and sentenced to 2 years in prison. He appealed the case and "the appeal court cleared Treu of any criminal intent because his security classification had been eliminated without his knowledge and it ruled he had, in fact, conscientiously kept the documents under lock and key." 18

What was at issue here was the problem of security classification<sup>19</sup> and the means of administering the Act. Treu's security clearance had been

<sup>&</sup>lt;sup>14</sup>Official Secrets Act, R.S.C. 1970, c. 0-3.

<sup>&</sup>lt;sup>15</sup>M. Cohen, "Secrecy in Law and Policy: The Canadian Experience and International Relations", quoted in Doern, op. cit., p. 146,

<sup>&</sup>lt;sup>16</sup>The Vancouver Sun, August 8, 1979.

<sup>&</sup>lt;sup>17</sup>R.T. Franson, Access to Information, Independent Administrative Agencies, Law Reform Commission of Canada, Minister of Supply and Services, 1979, p. 53.
<sup>18</sup>Maclean's, March 5, 1979.

<sup>&</sup>lt;sup>19</sup>For a discussion of the Canadian Classification System, see Rankin, op. cit., p. 34, and Rowat, op. cit., pp. 484-488.

revoked without his knowledge and without the knowledge of NATO officials, who continued to send him classified information. The reason for revoking the clearance remains unexplained but the lesson for civil servants bound by the Act as well as by their oath is clear. Treu declared:

I learned my lesson. As long as there are civil servants who can withdraw a person's security clearance without informing them, everyone working on classified projects will continue to have one foot in jail.<sup>20</sup>

State security is undoubtedly important. The problem in Canada is that its imputed importance is shrouded in a form of secrecy which gives rise to infringement of civil liberties. The imposition of the War Measures Act in 1970 included an infringement on the freedom of the press and demonstrated the capability of government to become the absolute arbiter of what constitutes information.<sup>21</sup> It also appears to have created within the security agencies of the state a belief in their status above the law. Two contemporary judicial inquiries have been offered testimony which indicates a belief within the royal Canadian mounted police that "the RCMP Act over-rode all other legislation".<sup>22</sup> There is also widespread suspicion that ministers of the crown may have known about and condoned illegal activity on the part of the RCMP.<sup>23</sup> It is not clear what part of this problem relates to state security and what part to political considerations and the concept of crown privilege.<sup>24</sup>

#### THE FEDERAL COURT ACT

The Federal Court Act<sup>25</sup> of 1970 is an attempt in Canadian jurisprudence to institutionalise the concept of crown privilege and to specify those areas which are exempt from this principle of secrecy. The Act specifies ways in which the courts may determine if information claimed to be privileged may be adjudicated as such. Section 41 of the Act provides:

1. Subject to the provisions of any other Act and to sub-section (2), when a Minister of the Crown certifies to any court by affidavit that a document belongs to a class or contains information which on grounds of a public interest specified in the affidavit should be withheld from production and discovery, the court may examine the document

<sup>&</sup>lt;sup>20</sup>Maclean's, March 5, 1979.

<sup>&</sup>lt;sup>21</sup>For an extended discussion of the *War Measures Act* and Freedom of Information, see Doern, op. cit., p. 147-148.

<sup>&</sup>lt;sup>22</sup>Weekend Magazine, ("The Canadian" February 3, 1979)

<sup>28</sup> Maclean's April 16, 1979.

<sup>&</sup>lt;sup>24</sup>John Hogarth, "The Individual and State Security", Social Sciences in Canada, Vol. 7, No. 1, March 1979, pp. 10-11.

<sup>&</sup>lt;sup>25</sup>Federal Court Act, R.S.C. 1970, c. 10 (2nd Supp.).

and order its production and discovery to the parties subject to such restrictions or conditions as it deems appropriate, if it concludes in the circumstances of the case that public interest in the proper administration of justice outweighs in importance the public interest specified in the affidavit.

2. When a Minister of the Crown certifies to any court by affidavit that the production or discovery of a document or its contents would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council for Canada, discovery and production shall be refused without any examination of the document by the court.<sup>26</sup>

The wording of Section 41(2) is especially important because it allows absolute discretion on the part of the minister to determine what might be 'injurious' to an extremely broad and ill-defined area. On the basis of an affidavit sworn, the document or its contents *shall* be refused examination.

The result of such unequivocal language in a law designed to ensure the 'proper administration of justice' has provoked strong criticism. The proponents of change in Canadian secrecy laws have concentrated much of their efforts for reform in this area, seeking ways in which the role of the judiciary might be expanded in order to ameliorate the apparent scope for arbitrary action on the part of ministers.

#### MOVEMENT FOR REFORM

Concern for and attempts to reform the practice of government secrecy in Canada is of fairly recent origin. In 1962 the Glassco Commission<sup>27</sup> pointed out some of the propaganda roles adopted by government departments. In contrast to practice in the United States, classification categories for documents were not clearly specified in Canada, nor was there provision for automatic declassification although a 30-50 year rule inherited from the British was employed by the official Canadian government archivist. This practice was ameliorated in 1965 with the circulation of a Treasury Board directive which specified 35 years as the time a document might be withheld without the permission of the Dominion archivist.<sup>28</sup> There was, however, a feeling that this directive might lead to a specification of 35 years as the minimum period for withholding, rather than a maximum.<sup>29</sup>

<sup>&</sup>lt;sup>28</sup>Federal Court Act, R.S.C., s. 41.

<sup>&</sup>lt;sup>27</sup>Canada, Royal Commission on Government Organization, Report (1962).

<sup>&</sup>lt;sup>28</sup>Management Improvement Circular, T.B. 636933 (March 30, 1965). Quoted in Rowat, op. cit., p. 494.

<sup>&</sup>lt;sup>29</sup>See Rowat, op. cit., pp. 494-495.

Also in 1965, a private member's Bill was introduced in the House of Commons<sup>30</sup> which attempted to legislate for the production of documents. Doomed to failure because of procedural rules in the House, it nevertheless was a harbinger of change. Professor Rowat's comparison of Canadian and Swedish secrecy laws also appeared in 1965<sup>31</sup> and in 1969 Mr. Ged Baldwin introduced another private member's Bill on the right to government information.<sup>32</sup>

By 1969 the government was moved to examine the area of administrative secrecy and security. It produced two reports that year which dealt with 'leakage' of documents and the general area of rights to freedom of information.<sup>33</sup> Although these reports tended to concentrate on the need for secrecy to preserve state security, there was the beginning, in *To Know and Be Known*, of a more liberal approach to the needs of the public for information. The result was the creation of an official government information agency—Information Canada—which was criticised as a propaganda organ of the government and subsequently disbanded.

By 1970 the pressure for specification of the rules by which information was to be released was recognised in the Federal Court Act.<sup>34</sup> In 1973 a cabinet directive was issued which more specifically noted what documents could be provided and what the exceptions were to the rule.<sup>35</sup> In 1974 Mr. Baldwin's perennial private member's Bill was referred to the House Committee on Regulations and in 1976 parliament adopted in principle the concept of freedom of information.<sup>36</sup> This at last cleared the way for implementation of a Freedom of Information Act and was supported by the Canadian Bar Association at their annual meeting that year.<sup>37</sup>

Perhaps in the spirit of the enactment of the US freedom of information legislation and the developments in Australia (1976), Canada by 1977 appeared to be well on its way to developing a comprehensive policy towards information and to be incorporating the arguments for such a policy in its political culture. The Province of Nova Scotia enacted legislation on access

<sup>&</sup>lt;sup>80</sup>Rowat, op. cit., p. 491, Bill C-39; first reading, April 8, 1965.

<sup>31</sup> Ibid.

<sup>&</sup>lt;sup>32</sup>Bill C-225, "An Act Respecting the Right of the Public to Information Concerning the Public Business".

<sup>&</sup>lt;sup>33</sup>Report of the Royal Commission on Security, Ottawa, Queen's Printer, 1969, and "To Know and to be Known", Report of the Task Force on Government Information, Ottawa, Queen's Printer, 1969.

<sup>34</sup>cf. Federal Court Act, op. cit.

<sup>&</sup>lt;sup>35</sup>See footnote 12. Also known as Cabinet Directive # 45, it is appended to Kenneth Kernaghan, Freedom of Information and Ministerial Responsibility, Ontario Commission on Freedom of Information and Individual Privacy, Toronto, 1978, and to The Honorable John Roberts, Legislation on Public Access to Government Documents, Secretary of State, June 1977, CP 32-27/1977, the "Green Paper".

<sup>&</sup>lt;sup>86</sup>Parl. Deb., H.C., 30th Parl., 2nd Sess., Feb. 1, 1976.

<sup>3758</sup>th Annual Meeting, Winnipeg, September 2, 1976.

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to information in 1977, the preamble of which includes the following principles:

First...the rationale for enhanced public access to information is that the people be protected against government; second, more access to information is consistent with the operations of responsible government; third, the limits of public access to information are set by the demands of privacy and the expeditious conduct of government business.<sup>38</sup>

In the same year the Province of Ontario created a commission on freedom of information and individual privacy which has to date published nine out of seventeen research studies to:

study and report to the Attorney General of Ontario on ways and means to improve the public information policies and relevant legislation and procedures of the Government of Ontario, and to examine:

- 1. Public information practices of other jurisdictions in order to consider possible changes which are compatible with the parliamentary traditions of the Government of Ontario and complementary to the mechanisms that presently exist for the protection of the rights of individuals;
- 2. The individual's right of access and appeal in relation to the use of Government information;
- 3. The categories of Government information which should be treated as confidential in order to protect the public interest;
- 4. The effectiveness of present procedures for the dissemination of Government information to the public;
- 5. The protection of individual privacy and the right of recourse in regard to the use of Government records.<sup>39</sup>

In 1978 the Province of New Brunswick also enacted freedom of information legislation in its jurisdiction.<sup>40</sup>

The federal government in 1977 enacted the Canadian Human Rights Act<sup>41</sup> which allows individuals the rights of access to personal information held on them by specified government departments. The government also issued a discussion paper or Green Paper on the legislative aspects of freedom of information<sup>42</sup> which has been the object of much debate.<sup>43</sup> Discussion has

<sup>88</sup>Smiley, op. cit., p. 41.

<sup>&</sup>lt;sup>89</sup> Ibid., p. ii. Titles and costs may be obtained from the Commission, 180 Dundas St. W., Toronto, M5G 1Z8.

<sup>40</sup>New Brunswick, Statutes, 1978, "Right to Information Act".

<sup>41</sup> Canada, Statutes, 1976-77, c. 33 "Canadian Human Rights Act."

<sup>42</sup>See footnote 35, above,

<sup>&</sup>lt;sup>43</sup>Fifth Report of the Standing Joint Committee on Regulations and Other Statutory Instruments, Votes and Proceedings of the House of Commons, June 28, 1979, pp. 916-21. See also, Rankin, op. cit.

proceeded apace and in March 1979 the Canadian Bar Association submitted a model Bill for freedom of information<sup>44</sup> and the Law Reform Commission has produced a study paper on 'Access to Information—Independent Administrative Agencies.<sup>45</sup>

Discussion is presently concentrated in the area of the means by which exemptions to complete freedom of information might best be accomplished. The Green Paper suggests five options for review of exemptions:

- 1. Parliamentary notice of motion for production.
- 2. An information auditor who does not deal with specific cases but presents an annual report to parliament.
- 3. An information commissioner who could examine documents in camera and advise the minister.
- An information commissioner who could order the release of documents.
- 5. Judicial review with power of release.

Option 1 is currently the practice but puts the onus for information requests on the House of Commons, where time and government intransigence works against disclosure. Option 2 is essentially toothless as is option 3. Options 4 and 5, although discussed in the Green Paper are not obviously favoured by the authors. It is this latter area, however, that most critiques and proposals for change have developed. One proposal is for a tribunal made up of individuals from a variety of backgrounds who would have the power to order release of documents.46 The proposal most strongly argued is that of judicial review coupled with an information commissioner. This proposal is put forward in the Freedom of Information Model Bill by the Canadian Bar Association.<sup>47</sup> It combines the principle of 'freedom of information unless exempted' with an information commissioner who could examine documents in camera. 48 His recommendations could be affirmed. varied, or set aside by the agency concerned<sup>49</sup> but this decision, along with the original recommendation of the commissioner could be appealed to a judge or judges of the trial division. 50 This approach has been argued against in the 'green paper' on the ground that judges could not be made properly aware of political considerations. This is countered by a legal profession who see the judiciary as being free from partisan politics.

<sup>44</sup>cf. Canadian Bar Association, op. cit.

<sup>45</sup>cf. R.T. Franson, op. cit.

<sup>&</sup>lt;sup>46</sup>P.G. Thomas, "Book Review" of Rankin and Roberts, Canadian Public Administration, Vol. 21, #1, Spring 1978, pp. 293-94.

<sup>47</sup>cf. Canadian Bar Association, op. cit.

<sup>48</sup> Ibid., 13(2), p. 37.

<sup>49</sup> Ibid., 14(2), p. 37.

<sup>50</sup> Ibid., 16(1-4), p. 38.

#### THE FUTURE

There are therefore apparent movements toward less government secrecy in Canada. However, there is still considerable resistance on the part of senior administrators to freedom of information. A change of government in 1979 was prefaced by a campaign promise for freedom of information legislation and there was some expectation that it would be brought up in the current year. This expectation was enhanced by the adherence of the current ruling party to the principles of freedom of information while in opposition. A cornerstone of the stance was the presence of Mr. Ged Baldwin. 51 Since the election, however, responsibility for freedom of information legislation has been placed in less insistent hands. There is still some expectation that notice of legislation will be included in the Speech From The Throne in October 1979<sup>52</sup> but there is a growing suspicion that as in revolutions, those who advocate change find themselves with different postures and priorities once in power. In August of 1979 Mr. Baldwin is reported to have said: "Frankly, if I was a citizen, I wouldn't believe a damn thing the government says."53 He went on to describe an 'implacably hostile' bureaucracy and said: "These people at the top of the bureaucracy are not anxious to see a bill that would work."54

On September 14, 1979, Mr. Baldwin again met the press and declared his intention of voting against his own governing minority party if "watered down freedom of information legislation" were introduced.<sup>55</sup> These acts are indications that freedom of information legislation may still be some distance in the future. There is, however, a strong continuing debate in Canada on the relative merits of freedom of information, and faltering steps towards the implementation of what has been described as being "essential to the full development of democracy."<sup>56</sup>

<sup>&</sup>lt;sup>51</sup>Mr. Baldwin has been appointed Chairman of the International Freedom of Information Commission (CAUT *Bulletin*, September 1979). An annual Newsletter is available from the Commission at Room 411, 76 Shoe Lane, London, EC4, England.

<sup>&</sup>lt;sup>52</sup>Maclean's, September 10, 1979.

<sup>53</sup> The Citizen, Ottawa, August 25, 1979.

<sup>54</sup> Ibid.

<sup>55</sup> CBC News, 14 September, 1979.

<sup>&</sup>lt;sup>56</sup>Rowat, op. cit., p. 491.

# The Problem of Secrecy in Canadian Public Administration: Some Perspectives\*

# P.K. Kuruvilla

THE PROBLEM of secrecy in public administration has been a controversial one for a long time in a number of countries including Canada. This controversy, however, has gained unprecedented momentum in Canada particularly since 1974 when the United States Congress passed a number of significant amendments to and widened the scope of the Freedom of Information Act which was enacted there in 1966. More recently, a few steps were taken towards enacting a Freedom of Information Act in Canada. On close observation, however, it becomes clear that Canada still has a long way to go before it will take full cognisance of the importance of public access to government information and enact a meaningful Freedom of Information Act. The purpose of this article is primarily fourfold: first, to highlight the importance of openness of information in public administration; second, to list a few of the most blatant instances of denial of information that have come to light in recent years, in order to illustrate the great degree of administrative secrecy that prevails in Canada; third, to discuss some of the major impediments that stand in the way of individuals who seek access to information at the disposal of the government and to evaluate the traditionally heard governmental arguments in defence of such denial of information; and fourth, to assess the various steps the government has taken so far in its purported quest to make more information available to the public and to advance a few reform proposals which could go a long way to lift the thick veil of secrecy that currently envelops the operations of the government at almost all levels.

In public administration, few issues are more crucial, or more difficult to resolve than the question of public access to information at the disposal of the government. The importance of information in public administration may be emphasised in many ways. First, in a broad political sense, an informed public is an important prerequisite for a liberal democratic form of government and a paucity of information will predictably preclude the public from

<sup>\*</sup> The author is grateful to Dr. John McMenemy, a colleague, for his helpful comments on an earlier version of this paper.

making properly informed choices whenever it has to exercise its franchise and to select its government. Second, devoid of adequate disclosure and dissemination of information about the operations and activities of the government, the public will not be able to discharge its democratic right to hold its administrators accountable for their actions on a day-to-day basis as well. Third, effective and imaginative public policy formulation and implementation presupposes a wide-ranging and full-fledged consideration of all policy options and opinions presented by the widest array of knowledgeable people both from the public service and outside. To facilitate this to the fullest extent, it is imperative that information concerning all aspects of public policies that are being dealt with by policy makers as well as executors must be made available for public perusal and scrutiny. Finally, governments have become perhaps the most important institutional repositories of information concerning many facets of the lives of their peoples and their diverse socio-economic, administrative and political problems and thus undoubtedly one of the best sources of reliable data and knowledge for researchers and others who require such information for educational and related purposes.2 In this context, it must also be stressed that since the so-called government documents are, strictly speaking, public documents, paid for by public taxes and are intended to promote public interest, the public has an inalienable democratic right to have access to them.3 Without belabouring the importance of public access to government information any further, it must be added that while many people might believe that the government documents that are generally hidden away from them contain little or no information that is of immediate concern to the average people, the truth of the matter is the contrary.

#### GOVERNMENTAL ABUSE OF SECRECY

What is at stake with regard to openness of government information is not at all any narrow legal or abstruse academic issue. What is at stake is indeed the reality of political and administrative power for those who possess information and the ever-present and enormous potential for its

<sup>&</sup>lt;sup>1</sup>See, Murray Rankin, Freedom of Information in Canada: Will the Doors Stay Shut? (A Research Study prepared for the Canadian Bar Association, August 1977), p. 155; Lloyd Francis, "Freedom of Information: A Personal View", Canadian Political Science Bulletin, October 1978, Vol. VIII, No. 1, p. 62; Joe Clark, "Democracy in Danger When Public in the Dark" (Excerpts from a speech at the opening of a special House of Commons Debate on public access to government files, June 22, 1978), Toronto Globe and Mail, June 26, 1978, p. 7.

<sup>&</sup>lt;sup>2</sup>The Secretary of State, "Legislation on Public Access to Government Documents" (The Green Paper) June 1977, p. 3.

<sup>&</sup>lt;sup>8</sup>Ibid., also see, Joe Clark, op. cit., p. 7.

abuse by them.4 For the purpose of underscoring this point, we may, in passing, recount here a few cases which may be somewhat representative of the many instances of governmental abuse of secrecy that have come to light in recent years and which invariably involved matters of considerable importance to not only average citizens, but even to members of parliament, royal commissions, etc. In some of these cases, the government simply refused to release information to the public or to members of parliament or even to royal commissions. In some others, the courts conducted secret trials under the Official Secrets Act, or the ministers proceeded against persons suspected of committing certain crimes without giving them an opportunity to be informed of the charges against them, or the government even broke a law and then tried to cover it up by banning the disclosure of any documents or details pertaining to it. In all of these cases, as long as the government did not want to disclose information at its disposal, it had almost untrammelled power to protect its own interests and those who were adversely affected by it had virtually no effective means to defend their interests.

The first incident to be mentioned here occurred about two years ago and involved the residents of the town of Port Hope who became concerned about the potential hazard from radiation poisoning which came from a refinery of Eldorado Nuclear, a crown corporation. The government conducted a series of studies on the situation and then told the residents that there was no need for concern as everything was fine, but repeatedly refused to release any reports of a factual nature regarding them on the ground that those reports contained classified information.<sup>5</sup>

The second incident took place in May 1975 and involved a member of parliament (Don Mazankowski, Conservative). He was refused a copy of an Air Canada contract with Canadian National (both crown corporations) on the ground that it was a confidential document. The MP subsequently found the same document on public file at the national archives! The embarrassed government then agreed to table the document in parliament.<sup>6</sup>

The third case involved a royal commission. In July 1977, the government established a royal commission (the McDonald Commission) with authority under the Public Inquiries Act to investigate allegations about illegal activities by the Royal Canadian Mounted Police (RCMP). At that time, the House of Commons was told by the minister responsible for the RCMP that it was essential "for the good administration of the RCMP that a full inquiry be made into allegations of unlawful actions" and the commission would "get

<sup>&</sup>lt;sup>4</sup>Geoffrey Stevens, "A Problem of Attitude", *The Globe and Mail*, July 7, 1976, ed. p; Joe Clark, op. cit., p. 7.

<sup>&</sup>lt;sup>5</sup>Joe Clark, op. cit.

<sup>&</sup>lt;sup>6</sup>Hugh Winsor, "Trying to Pierce Ottawa's Screen of Confidentiality", *The Globe and Mail*, November 22, 1976, p. 1; See, G.W. Baldwin, "History of Freedom of Information in the House of Commons", *Canadian Political Science Bulletin*, October 1978, Vol. VIII, No. 1, p. 57.

to the bottom of the matter". The order-in-council which established this commission also stated categorically that the inquiry will be held in camera only "where the commissioners deem it desirable in the public interest..." Nevertheless, on October 5, 1977, the lawyers representing the government appeared before the royal commission and maintained that "...confidential government papers are privileged in the sense that whether or not they be relevant to the resolution of an issue, because of consideration of public policy, these documents will not be produced... to make these confidential government papers public would be a departure from solidly established principles which are consonent with and indeed they are entrenched in our constitutional tradition..." The lawyers also argued that a broad class of documents, known as 'government papers' is protected from disclosure by cabinet privilege. They added, the government, not the royal commission, will determine when the public interest would be served by the disclosure of government papers.<sup>7</sup>

The fourth was a case in which an individual was tried and convicted after a secret trial under the Official Secrets Act of Canada. On May 4, 1978, Mr. Treu, a former Northern Electric engineer, was convicted of twice violating Section 4 of the Official Secrets Act for "having unlawfully retained information and documents" and having "failed to take reasonable care of the documents concerned, or conducted himself in such a manner as to endanger their safety" and sentence to two years of imprisonment. His trial was held entirely in secret in Quebec sessions court. Mr. Treu was given top secret clearance in the 1960s to work on classified defence projects, when his company, Northern Electric, was given a contract to develop a system linking NATO ground and air systems in Europe. After he left the company to set up his own consulting firm, he was not told that his clearance was revoked until 1974 when the RCMP raided his home and seized documents related to NATO and Canadian defence work. To add insult to injury, after being tried and convicted at a secret trial, Mr. Treu was forbidden to discuss his case, apparently as a condition for his bail. In February 1979, the Quebec court of appeals, however, threw out the lower court's ruling and set Mr. Treu free.8

The fifth example here refers to the exceptional powers a minister of the crown has to proceed against persons suspected of certain crimes, without

<sup>7</sup>See, Excerpts of their arguments from the commission's transcript, published in *The Globe and Mail*, October 16, 1977, p. 7; 'The Public's Business', editorial, *The Globe and Mail*, (Toronto), October 16, 1977; Jeff Sallot, 'Secrets: In a sudden about-face Ottawa has clamped down on what can be made public to the Mountie Commission—just when cabinet members were to be questioned'; *The Globe and Mail*, October 10, 1978, p. 7; William Monopoli, 'Can the Judiciary Stand Up for Our Right to Know?', *The Financial Post*, November 18, 1978, p. 7.

<sup>8</sup>See, 'Is Secrecy Just? That is a Secret' editorial, *The Globe and Mail*, March 17, 1978; 'Justice Must be Seen', editorial, *The Globe and Mail*, June 1, 1978; 'Beyond Peter Treu', editorial, *The Globe and Mail*, March 8, 1979.

giving them an opportunity to defend themselves. On March 15, 1979, in an interview that was prominently reported in newspapers, the Minister of Immigration acknowledged that he had invoked a few times some of the exceptional powers that were granted to him under a new law that came into being in Spring 1978. Under this law, the government can decide in secret whether a visitor, refugee or immigrant is a threat to national security and deport such suspects with no right to defend themselves.<sup>9</sup>

The sixth and final case to be mentioned here refers to an incident in which the government went to an incredible length including even taking a few legally questionable steps to forestall the release of official information first within a foreign jurisdiction and then domestically. In 1972, the government secretly participated in setting up what was in effect an illegal cartel to support uranium prices with the corporation of the companies dealing in uranium. These companies were given the assurance that they would never be prosecuted under Canadian law for their role in the cartel. And then in the summer of 1976, when details of this cartel arrangement began to emerge in the US in the course of congressional committee hearings, in an apparent attempt to prevent the US courts from subpoening the information in Canada, the Canadian Government hurriedly passed an order-in-council approving a regulation issued by the Atomic Energy Control Board of Canada making it illegal for anyone (including the MP) to disclose or communicate the contents of any written material relating to "conversations, discussions or meetings that took place between January 1, 1972 and December 31, 1975, in respect of production of uranium." Anyone contravening the regulation was liable to a fine of up to \$10,000 and five years in jail. The Canadian Government had earlier protested against publication of documents from the US committee. In the autumn of 1977, a group of opposition MPs. including the leader of the opposition, took the matter to the court asking it to declare the regulation invalid as a violation of the right to freedom of speech. The court, however, refused to make such a declaration. The situation improved after the government passed a revised order-in-council in the winter of 1977, which made it legal to discuss information that has been made public about the government's role in setting up the cartel, but it is still illegal for uranium producers or government officials to make any more information public.10 These are just a few recent examples of withholding of valuable information by the government. Nevertheless, they show conclusively that

<sup>&</sup>lt;sup>9</sup>See, "Deportation Without Defence Permitted: Secret Studies of Immigrants Defended", *Kitchener-Waterloo Record*, March 15, 1979, p. 55.

<sup>10</sup>John King, "Canada Gave Uranium Cartel Firms Protection Against Anti-Combine Law", The Globe and Mail, September 30, 1977, p. 1; "Cover-up, Phase Two", Editorial, The Globe and Mail, October 5, 1977; John King, "Cartel Rule Eased; Now One Can Talk of Ottawa's Role", The Globe and Mail, October 15, 1977, p. 11; "A Blow to Free Speech", Editorial, "Early Chance to Profit on "Secret' Uranium Cartel, Court Told", The Globe and Mail, November 12, 1977, p. 1.

information is being withheld at will on a grand scale and the government only discloses what it decides is in its best interests.

#### CLASSIFIED DOCUMENTS

At present, there are two broad levels of 'classified' or 'secret' government information in Canada. First, each department or agency has its own individual classified information or 'secrets'. The second level of secrecy involves cabinet 'secrets'. These 'secrets' are further divided into four categories of classified information, viz., restricted, confidential, secret and top secret. The government does not seem to have an up-to-date estimate as to how many people in the public service have the authority to stamp one of these classification on a document. An MP who has been a leading advocate for openness of government information, has estimated that as much as 80 per cent of government documents in Canada is stamped 'secret'. Whether this estimate is accurate or not, the long-established tradition in Canada has undoubtedly been that all administrative activities and documents are secret unless and until the government decides to disclose them.

Consequent to this tradition of excessive secrecy and the absence of a genuine Freedom of Information Act, those who seek access to government information have always been faced with a plethora of practically insurmountable procedural as well as substantive problems. Procedurally, unlike in the US, Canada has no first amendment ensuring constitutional freedom of press and therefore a constitutional right of the public to know. To complicate matters, when information is denied, the government is not obliged to furnish a reason for the denial. Furthermore, although the courts in Canada have traditionally been vested with the authority to issue certain 'writs' or orders directed toward administrative officials, those who are refused information cannot conceivably receive much relief from the courts. The prerogative writ of mandamus which is an order that an official carry out certain mandatory duties (ministerial) vested in him by law will not generally be issued against the crown or any agent of the crown acting in his official capacity. Before such a writ is issued, it will have to be demonstrated to the satisfaction of the court that the official in question has a statutory duty to produce the document in dispute. But as it is, such requisite statutory duty is lacking because most statutes either do not stipulate disclosure or explicitly stipulate non-disclosure. In addition, there is also the difficult requirement of 'standing' which demands that the plaintiff must show a 'special interest' in the subject matter of the suit over and above that of the general public. Even if those seeking access to government information can somehow

 <sup>11</sup>The Report of the Royal Commission on Security (Abridged), June, 1969, pp. 69-70.
 12See, the statement of G.W. Baldwin in "Halifax Meet: Public Secrecy is Challenged", Kitchener-Waterloo Record, September 7, 1976, p. 63.

surmount these procedural obstacles, they will still be saddled with a number of serious substantive difficulties. For example, there is always the possibility for the government to invoke its 'crown's privilege' to declare certain documents secret and to keep them beyond the domain of judicial scrutiny.<sup>13</sup>

It is true that over the years, this privilege has suffered a certain amount of erosion as a result of judicial interpretation and statutory legislation such as the Federal Court Act of 1970. Sub-section 41(1) of the Federal Court Act imposes some limitation on the powers of the federal cabinet ministers to withhold documents from the public. It provides that a minister may certify to a court that a document should be withheld in the public interest, but the court, after examining the document, decides whether this claim is justified, or whether the 'public interest' in the proper administration of justice outweighs the importance of the public interest specified in the 'minister's affidavit' opposing the document's production. However, under sub-section 41(2) the minister is still left with a dangerously vast amount of power to withhold documents from production in any court merely by certifying that it is necessary to do so. It provides that:

When a Minister of the Crown certified to any court by affidavit that the production or discovery of a document or its contents would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council of Canada, discovery and production shall be refused without any examination of the document by the Court.

So also, when faced with the problem of ministerial refusal to release vital information and the exclusion of such refusals from the purview of judicial scrutiny, if the litigants decide to seek solace from extra-ministerial and judicial sources such as the public service or parliament, they will still be menaced by a multitude of rules and regulations, many of which are arcane relics of a bygone era.

#### CIVIL SERVANTS' OATH

As far as public servants are concerned, there is a number of important legal as well as administrative sanctions that serve as deterrents against any unauthorised or wrongful disclosure of information. The most important sanction against anyone who seeks to breach the walls of secrecy seems to be the Official Secrets Act of 1939, which is based on a 1911 British Act which

<sup>18</sup>Murray Rankin, "Access to Information Vital to Researchers", C.A.U.T. Bulletin, January, 1978, p. 6; Freedom of Information in Canada: Will the Doors Stay Shut? pp. 7-12; Geoffrey Stevens, "A Multiquetoast Brief", The Globe and Mail, May 31, 1978, ed. p.; "Judicial Review", ibid., July 25, 1978, Ed. p.; "Dangerous Crown Privilege", Editorial, Ibid., September 30, 1974.

forbids the disclosure of literally everything about the government without official approval. The Official Secrets Act of Canada which was originally designed to combat espionage activity in the country at a time when World War II was gathering momentum in Europe also provides sweeping powers to the government to prosecute anyone for releasing without permission any information that is considered confidential. Section 4(1) of the Act provides:

Every person is guilty of an offence...who having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document or information...that has been entrusted in confidence to him by any person holding office under Her Majesty... communicates the code word, pass word, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate...

The Act also makes it an offence for any person to receive information, knowing or having reasonable ground to believe that it is illegally obtained.<sup>14</sup> As Canada's most influential national newspaper put it editorially recently:

Once invoked, the Official Secrets Act can be exercised in perfect darkness: with no provision for the public scrutiny of its investigative instruments, no forum for the public examination of its objectives, no assurance of a public trial—nothing. A man may be pursued, charged, tried, convicted, sentenced (to a maximum of 14 years' imprisonment) and eventually released, with barely a single public syllable uttered. And it doesn't stop there. A victim of the Official Secrets Act may be ordered never to discuss any matter relating to his case—on pain of prosecution—because to do so would be to breach an official secret.<sup>15</sup>

Besides the provisions of the Official Secrets Act, the various provisions of the criminal code governing offences such as breach of public trust, theft, and even treason can also be adroitly invoked to deal with public servants who engage in wrongful or unauthorised disclosure of information. Another, legally less severe, but nevertheless administratively potent, sanction against unauthorised discharge of information by public servants can be seen in the oath of secrecy that every public servant has to take at the time of assuming office, in which he affirms that:

... I will not, without due authority... disclose or make known any matter that comes to my knowledge by reason of such employment.<sup>16</sup>

<sup>&</sup>lt;sup>14</sup>Official Secrets Act, Revised Statutes of Canada, 1979, c. 0-3, s. 4(3).

<sup>&</sup>lt;sup>15</sup>See, "Beyond Peter Treu", Editorial, The Globe and Mail, March 8, 1979.

<sup>&</sup>lt;sup>16</sup>The Public Service Employment Act, R.S.C., 1970, C-P-32, Schedule III. Also see, Rankin, op. cit., p. 30.

If the litigants seek to enlist the support of their members of parliament, as an alternative to the public service route, then also the odds seem to be heavily against them. Theoretically, ever since the government tabled in parliament in March 1973, the 'guidelines for notice of motion for the production of papers',17 it is committed to make government papers, documents, and consultant reports available to the MPs when they file a notice of motion requesting them, provided they do not fall within certain categories of exemption. But, in practice, there are a number of factors that make this alternative almost totally worthless to the litigants. This is so because, first, they have to persuade the MPs to take up their case and file the necessary motion before parliament on their behalf. 18 Second, there are a few difficulties that stare the parliamentarians themselves in the face in this regard. One such difficulty is that these guidelines include sixteen broad exemptions19 under which the government can conveniently reject requests from MPs for information whenever it deems desirable to do so. Another difficulty is that, given the nature of the parliamentary system, it is unrealistic to expect parliament to act as a viable institution to process requests for information on a routine basis. It is well known that ordinary parliamentarians have little power or influence and the cabinet makes the real decisions. The standing orders of the House of Commons provide that when an MP is not satisfied with the government's explanation for refusing to release a document, the matter may be debated for a maximum of one hour and fifty minutes and then voted upon. But in practice it is too much to expect that parliament will actually be able to devote so much time for such debates. So also, since the very continuance of the government would depend upon the outcome of such votes, as long as the government commands a majority in the house, it is very unlikely that documents would be made available against the will of the government as a result of such debates and vote taking.20

Traditionally, there have been two principal arguments coming from governmental sources in support of their obsession with secrecy and opposition to any kind of meaningful freedom of information law. First, it has been a long-standing familiar argument that public access to government documents will be detrimental to public policy-making process because it

<sup>&</sup>lt;sup>17</sup>Guidelines for the Production of Papers in Parliament, Parl. Deb. H.C., Vol. 2, 1973 at 2288.

<sup>18</sup>Rankin, op. cit., p. 38.

<sup>&</sup>lt;sup>19</sup>These include: legal advice given to the government; information that would be detrimental to the security of the state; papers which "might be detrimental" to the future conduct of foreign relations or federal-provincial relations; papers which "could allow or result" in financial gain or loss by a person or persons; papers reflecting on the competence or character of an individual; "papers of a voluminous character or which would require an inordinate cost or length of time to prepare"; papers which would embarrass the Royal Family or its representatives; papers relating to negotiations leading to a contract; Cabinet documents; papers of a private or confidential nature.

<sup>20</sup>Rankin, op. cit., p. 40.

might inhibit free discussion of alternative policy options by public servants and ministers and make it extremely difficult for senior public servants to safeguard their political neutrality and anonymity and to serve successive governments of different political parties. More recently, the Green Paper on government documents published by the government reiterated this argument in no uncertain terms when it asserted that:

Individual public servants who signed reports, memoranda, or letters subsequently released to the public might become the subject of public comment, and under our convention of the anonymity of the public service, they would be unable to respond. As well, advice contained in such documents might be construed in the press and Parliament as embarrassing to a minister or be used to try to break down the unity of the governing party, even though such advice did not represent government policy or a course of action acceptable to the minister. Furthermore, senior officials frequently find themselves providing advice to ministers within a tight framework of politically acceptable solutions or existing government policy. Exposure to such recommendations might cripple the ability of ministers of a new government of a different party to enter into relations of full mutual confidence with public servants. Yet the features of political neutrality, promotion on merit, and anonymity of public servants help provide for cohesive administration through the many transitions of government which can occur in a parliamentary system. For these reasons, the candor and comprehensiveness of recorded dialogue within government might be eroded by systematic public access.21

The Royal Commission on Security echoed the same sentiment in its report when it wrote:

We would view suggestions for increased publicity with some alarm. We think the knowledge that memoranda might be made public would have a seriously inhibiting effect on the transaction of public business. We believe that the process of policy-making implies a need for wideranging and tentative consideration of options, many of which it would be silly or undesirable to expose to the public gaze. To insist that all such communications must be made public would appear to us likely to impede the discussive deliberation that is necessary for wise administration.<sup>22</sup>

A second argument opposing public access to government documents is predicated on the premise that the introduction of public access would

<sup>&</sup>lt;sup>21</sup>Secretary of State, Legislation of Public Access to Government Documents, 1977, p. 4.
<sup>22</sup>The Royal Commission on Security Report (Abridged), Ottawa, Queens Printer, 1969, Section 223, p. 80.

necessarily have to be coupled with the establishment of a list of exemptions as well as an effective mechanism for dealing with disputes as to whether particular documents should or should not be made public. According to this argument, any such arrangement independent of the ministry would naturally lead to an erosion of ministerial responsibility which entails the answerability of ministers to parliament for the actions taken by them or by public servants responsible to them. This argument also received a reiteration in the Green Paper when it said:

Legislation on public access to government documents would require continual decision on the applicability of exemption to material requested in applications for access. This would have important implications for the exercise of ministerial responsibility. To the extent that Ministers would be required to decide on requests, the exercise of ministerial responsibility would be sharpened. If such decisions, taken by a Minister or in his name, were subject to a mandatory reversal by some review mechanism, with power to require the release of documents, the exercise of ministerial responsibility could be eroded. For example, a minister could not be criticized for the contents of government documents which represent no more than the analysis or recommendations of individual officials or consultants and are not government or departmental policy. Though presumably the Minister may be questioned to ascertain the status of such documents, he cannot be considered ipso facto responsible for them in the same sense in which he is held to be responsible for, say, the administrative actions taken in his department. Of greater importance, mandatory ordering of the production of documents, in effect substitutes the judgement of an appointed official—a parliamentary commissioner or a judge—for that of a Minister, with regard to the need for confidentiality in areas such as national security, or international or federalprovincial relations. The consequences of misjudgement in this regard will, however, be visited upon ministers, and upon the public interest which they are elected to interpret in policies and programmes. This is the essence of ministerial responsibility. Ministers are accountable for their decisions-to Parliament and to the public. Public servants are accountable in the first instance to Ministers.23

<sup>&</sup>lt;sup>23</sup>The Secretary of State, op. cit., pp. 4-5. Also see, Gordon Robertson (Clerk of the Privy Council and Secretary to the Cabinet), "The Growing Leak of Secret Documents", The Globe and Mail, September 7, 1972, p. 7; "Courts Should not be the Arbiter", The Financial Post, December 17, 1977, p. 7; Anthony Whittingham, "Right to Know is Not Yet a Right", The Financial Post, September 18, 1976, ed. p., Hugh Winsor, "Anti-Secrecy Moves Upset Tradition", The Globe and Mail, November 24, 1976, p. 8.

# STEPS TOWARDS MORE FREEDOM OF INFORMATION

Using these and a few other similar arguments, successive governments have, so far, successfully denied any significant degree of public access to their ever-expanding arsenals of secrecy. However paradoxical it may seem. they have also been taking a few tepid steps in the direction of enacting a Freedom of Information Act, especially during the last decade. In 1969, an authoritative government spokesman publicly acknowledged the persistent pleas of advocates of freedom of information in the country and promised government support for the adoption of a Freedom of Information Act for the first time.<sup>24</sup> There were, however, hardly any visible developments in that direction for the next four years or so until in March 1973, when the government announced a set of guidelines covering release of information by cabinet ministers in response to MPs' questions. Although the stated purpose of these guidelines was to assist the MPs to obtain information contained in government documents, as has been pointed out earlier, these guidelines included sixteen broad exemptions which 'almost swallowed the rule' and which ministers could easily use in refusing to release documents requested by MPs. In the autumn of 1973, the government also asked Mr. D.F. Wall. who was then assistant secretary of the cabinet for security matters, to undertake a study on the existing means of providing information to parliament and to the public and to make recommendations for improvements.

This study was submitted to the Prime Minister in 1974, but the government, in its characteristic fashion, decided to keep it secret until an expurgated edition of it was made public before the Standing Committee of the House of Commons—the Senate Joint Committee on Regulations and other Statutory Instruments in 1975. Mr. Wall's report generally subscribed to the traditional view that most of the policy development processes should be shrouded in secrecy in order to promote candour on the part of public servants and to preserve the conventions of civil service neutrality and anonymity, but still contained a few strong criticisms of the government's information policies. These included: poorly prepared information handouts; inadequate explanations of the content and rationale of policies, a pervasive tendency on the part of public servants to remain aloof from and unavailable to journalists and MPs; an outdated Official Secrets Act; an unduly restrictive oath of office and secrecy; and a well-entrenched and long-standing tradition of over-classification of information.<sup>25</sup> Mr. Wall also urged the adoption of an improved

<sup>&</sup>lt;sup>24</sup>It was Mr. John Turner, then Minister of Justice, who called for the introduction of a Freedom of Information law. The two key features of the legislation he proposed were: first, 'a very narrow list of exceptions' under which the government could withhold information, and, two, judicial review of ministerial refusals to make information public.

<sup>&</sup>lt;sup>25</sup>For these and a few other related points, see, Paul G. Thomas, "Secrecy and Publicity in Canadian Government", *Canadian Public Administration*, Spring 1976, Vol. 19, No. 1, p. 159.

information policy on the basis of the government's guidelines of March 1973, but with only eight exemptions instead of sixteen.<sup>26</sup>

The next step came in February 1976, when an all-party committee on freedom of information of members of the House of Commons released a paper in which it unanimously recommended four things, viz.,

- 1. Freedom of information legislation be enacted in the then session of parliament;
- 2. The act provides for judicial review by a panel of federal court judges;
- 3. The exemptions for releasing documents be specifically and narrowly drafted; and,
- 4. Freedom of information Bills presented by the government be subject to a free vote.<sup>27</sup>

In June, 1977, three years after Mr. Wall completed his study, and sixteen months after the House of Commons Committee made its recommendations, the government published a Green Paper on legislation on public access to government documents with a great deal of fanfare and publicity. The Green Paper began with ringing phrases about open government as the 'basis of democracy' and an 'essential consequence of the extension of the franchise to all adult citizens'. It also acknowledged unequivocally at the outset that citizens are entitled to more information about the way they are governed and even asserted that the government believes firmly in the basic principle that information developed at public expense ought to be publicly available whenever possible. However, thereafter it went to considerable length to highlight the difficulty in balancing these rights against effective government and to vindicate its characterisation of parliamentary government as a place of 'public decisions privately prepared'. Although the Green Paper acknowledged that there are a number of areas where the government should be more open, it advocated only the type of changes that would not interfere with what it described as the 'privacy of decision-making'. So also, despite the few platitudinous statements about the principles of open government it presented at the outset, the bulk of it was devoted to exemptions to these principles and the possible options for review of complaints by applicants who have been

<sup>&</sup>lt;sup>26</sup>These include information that would: endanger the security of the state, damage Canada's interests in international relations, constitute an invasion of individual privacy, damage federal-provincial relations, jeopardize a government process of financial or commercial negotiation, jeopardize the integrity of legal opinions, constitute a breach of confidence, of the law, or of the rules of Parliament, and 'jeopardize the confidence necessary to the advisory, consultative and deliberative processes of government administration.' See, Paul G. Thomas, *op. cit.*, p. 160.

<sup>&</sup>lt;sup>27</sup>See, Lloyd Francis, op. cit., p. 59.

denied access to government documents.28

The exemptions proposed in the Green Paper covered the following nine categories, viz.,

those documents, the disclosure of which, or the release of information in which, might

- (i) be injurious to international relations, national defence or security or federal-provincial relations;
- (ii) disclose a confidence of the Queen's Privy Council for Canada;
- (iii) disclose information obtained or prepared by any government institution or part of a government institution, that is an investigative body:
  - (a) in relation to national security,
  - (b) in the course of investigations pertaining to the detection or suppression of crime generally, or
  - (c) in the course of investigations pertaining to the administration or enforcement of any Act of Parliament;
- (iv) disclose personal information as defined in Part IV of the Canadian Human Rights Act or threaten the safety of any individual or disclose correspondence between a member of the public and a Member of Parliament or the government;
- (ν) impede the functioning of, or the examination of a case or issue before, a court of law, a quasi-judicial board, commission or other tribunal, or any inquiry established under the Inquiries Act:
- (vi) disclose legal opinions or advice provided to a government institution or privileged communications between lawyer and client in a matter of government business;
- (vii) disclose financial or commercial information which:
  - (a) would jeopardise the position of a government institution in relation to contractual or other negotiations or the position of any other party to such negotiations, or,
  - (b) would result in significant and undue financial loss or gain by a person, group, organisation or government institution; or,
  - (c) would affect adversely a person, group, organisation or government institution in regard to its competitive position;
- (viii) destroy the fullness and frankness of advice serving the decision-making process, particularly in relation to advice to or by ministers,

<sup>&</sup>lt;sup>28</sup>See, Hugh Winsor, "Exemptions Limit Freedom of Information Proposals", *The Globe and Mail*, June 28, 1977, p. 1; "Government Tables Policy on Secrecy", *The Globe and Mail*, June 30, 1977, p. 9.

deputy heads, and senior officials, to preparation of legislation, or to the conduct of parliamentary business.

(ix) be prohibited by any federal enactment.29

The options for review of complaints by applicants who have been denied access to government documents considered in the Green Paper were as follows:

- I. Parliamentary review of the administration of the legislation;
- II. An information auditor with powers to monitor the administration of the legislation, similar to the powers of the Auditor General in respect of financial management;
- III. An information commissioner with 'ombudsman-type' powers to consider complaints from applicants, examine *in camera* the documents requested, and issue public advice to the government as to his agreement or disagreement as to the application of the exemptions to the documents in question;
- IV. An information commissioner with powers to consider complaints from applicants, examine *in camera* the documents requested, and issue a binding order to the government to release a document where he does not agree with the government's position as to application of the exemptions; and
- V. Review by the courts of the administration of the legislation.30

As far as one can judge by reading the Green Paper, the options that were most and least favoured by the government were the third (an information commissioner with 'ombudsman-type' advisory powers) and the fifth (judicial review), respectively. Although when there is a difference of opinion between such an information commissioner and the minister of a department concerned, the minister will have the final say and the former would have no more power than that of recommendation and publicity. The Green Paper claimed that:

Such an information commissioner's formal powers, therefore would be confined to the power of publicity although a report, contrary to a ministerial decision, might be very compelling in a matter of this kind. Given an information commissioner as a creature of parliament, a reasonable sense of independence and a degree of public confidence should be expected. This option could provide consistent and speedy recourse for applicants to choose to complain, at minimal cost to them,<sup>31</sup>

<sup>&</sup>lt;sup>29</sup>The Secretary of State, op. cit., pp. 10-11.

<sup>30</sup> Ibid., pp. 16-19.

<sup>31</sup> Ibid., p. 17.

At the same time, it had this to say about the option of judicial review:

this approach raises a number of fundamental questions. One of the cornerstones of our system of parliamentary democracy is that Canadian courts and the judges who sit on them must not only be completely independent of the political process but must also be seen to be so. The role of the judge is the impartial arbitrator; he must ensure that justice is fairly administered in the resolution of legal problems. To require that he become a judge of a minister's actions, that he should have the power to replace the opinion of the minister with his own opinion, is to change his role entirely and to bring him into the political arena where he cannot properly defend himself. All of this could seriously threaten the independence of the courts and thereby place in jeopardy our present judicial system. Under our current conventions, it is the minister who must remain responsible for deciding whether to refuse or grant access to documents and this responsibility is a constitutional one owed to his cabinet colleagues, to Parliament, and ultimately to the electorate. A judge cannot be asked, in our system of government, to assume the role of giving an opinion on the merits of the very question that has been decided by a Minister. There is no way that a judicial officer can be properly made aware of all the political, economic, social and security factors that may have led to the decision in issue. Nor should the courts be allowed to usurp the constitutional role that parliament plays in making a Minister answerable to it for his actions...In short, the use of the elaborate apparatus of the courts would serve neither the exercise of parliamentary review of ministerial decision-making, nor the public interest in an efficient and effective judicial system, nor the interests of an applicant facing a government department with a substantial array of legal talent at its disposal.32

Soon after the Green Paper was released, it was referred to a standing committee of the House of Commons and the Senate on Regulations and Other Statutory Instruments for review and recommendations. In June, 1978, this committee unanimously recommended a fairly tough freedom of Information law with fewer grounds for refusing information and a provision for those refused information to have a final recourse to the courts. But the government did not act upon these recommendations.

#### JUDICIAL REVIEW OF MINISTERIAL REFUSAL OF INFORMATION

The newly elected Prime Minister Joseph Clark has promised to introduce speedily a Freedom of Information Act patterned after the Freedom of

<sup>32</sup>The Secretary of State, op. cit., pp. 17-18.

Information Act in the US, with narrow exemptions and with judicial review of ministerial refusals to release information to the public. However, without attempting to anticipate what lies ahead, it may still be pointed out here that in the opinion of this author, the two traditional but untested governmental arguments supporting secrecy of information cited above, however sincere they might be, show only one side of the case. Without ignoring the importance of the first argument, viz., the candour and comprehensiveness of recorded dialogue within government might be eroded by systematic public access, it may be said that when a Bill has been brought before parliament, there is nothing inherently wrong about the civil servants who have studied the problem factually and have tendered their advice on the basis of their expertise in the matter being required to disclose the nature of their recommendations. Indeed, on the contrary, it can be argued that unless there are some very exceptionally confidential angles to it, it would be incredibly wrong not to disclose the basic factual details of the matter on the basis of which the government makes a policy decision because otherwise the outsiders cannot decide whether there was sound judgment or not behind governmental decisions.<sup>33</sup> Similarly, on closer scrutiny, the contention that a law making public document if made public would jeopardise the long-cherished neutrality and anonymity of public servants because they will become identified as protagonists in policy debates, also does not seem to hold much water for at least two reasons. First, if at all this is a genuine danger, it can be deterred by deleting the pertinent names of the public servants involved in the documents which are revealed.34 Second, public service neutrality and anonymity need not be regarded as ultimate ends in themselves that must be safeguarded at any cost including even sacrificing the very integrity of the governmental decision-making process.

Concerning the second argument, namely, public access to government documents coupled with a mechanism such as judicial review to resolve disputes regarding specific documents could compromise the concept of ministerial responsibility too, certain counter-arguments can be advanced. First, the concept of ministerial responsibility is only a convention or an unwritten rule that has been carried over from Britain and there is nothing permanent or sacrosanct about it that cannot be altered or even abandoned altogether, if found necessary otherwise. Second, although

34Rankin, op. cit., p. 135; Joe Clark, op. cit.

<sup>&</sup>lt;sup>38</sup>See, Gordon Fairweather, "Secrecy: Why the Sacred Cow Should Die and the Public Should See More", *The Globe and Mail*, September 9, 1972, p. 7; Ian Macdonald, "Cut the Secrecy that Leads to Distrust and Fear", *The Financial Post*, May 23, 1974, ed. p.; Thomas Coleman, "Act Could Give Canadians Freedom to Know Little", *The Globe and Mail*, September 9, 1976, p. 9; Philip Teasdale, "A Crusade for the Right to Know", *The Financial Post*, April 16, 1977, ed. p; Lloyd Francis, *op. cit.*, pp. 59-62; Tom Riley, "Freedom of Information—the Red Issue is Judicial Review", *C.A.U.T. Bulletin*, October 1978, pp. 7-8; Rankin, *op. cit.*, pp. 134-136.

parliament has the constitutional ability to make the government answerable to it for its actions, in practice, it cannot hold it accountable unless it has adequate information as to what the government is doing. It may even be argued that by systematically denying information, the government has already deprived parliament of this constitutional duty and hence the concept of ministerial responsibility is now nothing but a myth.<sup>35</sup> Third, to assert that ministerial decisions must not be subject to a reversal by some review mechanism with power to require the release of documents, is in fact to maintain that ministers must be above law or be themselves judges in their case. Fourth, the argument that giving responsibility to the courts to review executive decisions concerning the release of documents will impinge upon the rights and responsibilities of the ministers and obscure the distinction between the political and judicial processes, also may be answered as follows.

First, besides the executive and legislative domains, parliamentary democratic tradition sanctifies the judicial domain as well. It, in fact, dictates that while legislatures enact laws and ministers administer them, courts settle disputes, including even a review of ministerial interpretations of legislative enactments, if and when it becomes necessary. Second, it must not be forgotten that judges have already been overriding the legal interpretations of the executive in a number of areas. And, third, if the issue in question is the sensitiveness of the material that is involved, the courts can very well deal with them on an in-camera basis.<sup>36</sup>

Finally, in conclusion, it must also be pointed out that perhaps there cannot be much disagreement over the necessity of having a few exceptions under a Freedom of Information Act, provided their sole purpose is to protect the genuine interests of the state. But it is extremely important that before such exemptions are drawn up, a distinction between the interests of the country at large, on the one hand, and the interests of the government of the day, on the other, must be struck and the government must have the right to withhold information only when it would adversely affect the former.37 Such exemptions also must not be too broad and sweeping in scope. Otherwise, they would predictably dilute and even defeat altogether the very purpose of a Freedom of Information Act. Besides the exact nature of the review mechanism and the exemptions that must be provided for, there are a few other key issues such as what should be the extent of time to be allowed between the receipt of requests for documents and their disposition, the share of the cost of reproducing information to be borne by those who request for it, etc., which must also be resolved before an effective Freedom of Information Act can be brought about. However, as the

<sup>37</sup>Lloyd Francis, op. cit., pp. 62-65; Tom Riley, op. cit., pp. 7-8.

<sup>35</sup>Rankin, op. cit., pp. 108-114; Joe Clark, op. cit.

<sup>&</sup>lt;sup>36</sup>Rankin, op. cit., pp. 114-128; Joe Clark, op. cit.; H Tom Riley, op. cit., pp. 7-8; Geoffrey Stevens, "Judicial Review", The Globe and Mail, May 25, 1978, ed. p.

experience in the US has shown,<sup>38</sup> these are not insoluble issues at all, provided there is sufficient political will and commitment on the part of the government to depart from the present situation which is dangerously open to abuse and to act decisively in favour of lifting the veil of secrecy that surrounds its activities. As matters now stand, it is difficult to avoid the conclusion that the time has come for Canada to follow the lead of the United States in passing an effective Freedom of Information Act that would provide public access to government information.

No.

# The Canadian Proposals on Freedom of Information

The new Progressive Conservative Government has just introduced for first reading its promised Freedom of Information Act and it has yet to receive a full debate in the legislature. The Bill goes farther than the previous government's proposals in seeking to define and to limit the range of matters on which the government will be able to withhold information. Moreover, there is still needed a privacy bill and further attention to the Official Secrets Act which is now seen to be badly out-of-date. To some extent, further developments may have to await the report of the Royal Commission on the R. C. M. Police which is particularly concerned with provisions relating to security.

<sup>&</sup>lt;sup>38</sup>The U.S. Freedom of Information Act (as amended in 1974) also contains nine exemptions, but by comparison they are far narrower than the exemptions proposed in the Canadian Green Paper. Also see, I. Cinman, "U.S. Freedom of Information Act: Some Difficulties Amid Success", *C.A.U.T. Bulletin*, October 1978, p. 11.

# The Federal Privacy Commissioner of Canada: Defender of Peoples' Privacy\*

G.B. Sharma

TN PURSUANCE of the recommendations made by the Royal Commission on the Status of Women (1970), Bill C-72, entitled the Canadian Human Rights Bill, was introduced by the then Minister of Justice in July, 1975. The Bill died on the order paper of the first session of the 30th parliament, but was reintroduced as Bill C-25, in November, 1976. The Bill C-25 was passed by the parliament and received the royal assent on July 14, 1977. The Canadian Human Rights Act (hereinafter referred to as the Act), thus promulgated was divided into five parts which were enforced in two different stages. The five parts of the Act are: Part I: Proscribed Discrimination: part II: Canadian Human Rights Commission; part III: Discriminatory Practices; part IV: Protection of Personal Information; and part V: General. Of these, part II—the Human Rights Commission, was promulgated within less than a month following the enforcement of the Act. Accordingly, a Human Rights Commission was constituted with R.G.L. Fairweather as the chief commissioner, Rita Cardieux, the deputy commissioner, and Inger Hansen as a member. Later, in February, 1978, five part-time commissioners were also appointed by an order in council so as to complete its composition. The first meeting of all the commissioners was held in Ottawa from February 20 to 22, 1978. However, the substantive parts of the Act—those concerning discriminatory practices, the protection of privacy of information (contained in the federal data banks), and the functioning of the commission were promulgated on March 1, 1978.

In accordance with the provisions of part IV of the Act, the chief commissioner recommended to the Minister of Justice that Inger Hansen, one of the members of the Canadian Human Rights Commission, be designated as

<sup>\*</sup> The author is extremely grateful to Inger Hansen, the Privacy Commissioner and her secretariat for extending their cooperation without which this perhaps could not have been completed. However, the responsibility for the views expressed in the paper is entirely of the author.

<sup>&</sup>lt;sup>1</sup>Canada, Annual Report, Canadian Human Rights Commission, Ottawa, Human Rights Commission Secretariat, 1977-78, p. 7.

privacy commissioner (PC). Inger Hansen assumed her office on October 1, 1977.<sup>2</sup> But her office could actually commence its work only from March 1, 1978, that is, the date of promulgation of part IV of the Act.

In this paper we intend to critically examine the various provisions contained in part IV of the Act with special reference to how they have hindered or helped Canadian citizens and residents in the protection of their personal privacy, and gaining access to personal information. Additionally, we also intend to examine the role of the PC during the last year and a half, against the ombudsman rhetoric of 'peoples' defender'.

As far as the methodology employed by us for collecting our data is concerned, we may divide it into two parts. First, a sizeable part of it has been collected from the secondary source, namely, the documents of the PC's secretariat; second, for collecting first hand information regarding the social profile of the PC's clients, we had designed a mini-questionnaire. Owing to the dual constraints of time and financial resources we decided to pick up a small sample of one hundred cases chosen on a random basis. The sample thus chosen constituted nearly 12 per cent of the total complainants to the PC. The questionnaires were mailed to our respondents directly by the PC's secretariat. The respondents were also requested to return their duly filled responses to the PC's secretariat in order to assure them about the privacy of their responses. questionnaires were mailed to respondents in the first week of July 1979, and all the responses received from them by the end of third week of August, 1979, were processed. The response rate was as low as 41 per cent. We, therefore, realise that no sound generalisations can possibly be made on the basis of such a small number of responses but we do believe that they are not without value. As they are indicative of certain trends, we may gainfully use them for the purpose of accomplishing our limited objective of completing this paper.

Having stated our main objectives and methodology, we intend to examine certain general provisions of the Act which have a bearing upon the position of the PC.

#### GENERAL PROVISIONS OF THE ACT EXAMINED

As pointed out above, the Act prescribes that "The Minister of Justice, on the recommendation of the Chief Commissioner of the Canadian Human Rights Commission established by Section 21, shall designate a member of that Commission to act as Privacy Commissioner (Section 57)." Needless to add that the above provision of the Act enabling the Minister of Justice to name the PC goes very much against the concept of an ombudsmanlike

institution as a representative of legislature.3 In our opinion, it further compromises with the principle of independence of a grievance-handling mechanism, such as the office of the PC, from the executive. We, therefore, believe that for ensuring the independence of the PC from the executive, not only in the spirit but also in the letter of law, it would be much better to amend the above section along the following lines. "The Speaker of the House of Commons, on the recommendation of the Chief Commissioner of the Canadian Human Rights Commission.... shall designate a full-time member of the HRC to act as Privacy Commissioner." As far as the tenure is concerned, a PC shall hold office for a term not exceeding seven years, in case the incumbent happens to be a full-time member of the Commission, and not exceeding three years, in case he is drawn from amongst its part-time members. The present incumbent however being a full-time member sheenjoys a seven-year term. [(Section 21(3)]. In regard to the tenure of office of the members of the Commission, the Act further provides that "each member of the Commission holds office during good behaviour but may be removed at any time by the Governor in Council on address of the Senate and House of Commons [(Section 21(4)]. However, a member of the Commission is eligible for reappointment in the same or another capacity for an unlimited number of terms [(Section 21(5)]."

The generality of the following provisions of the Act further restricts the independence of the Commission as well as the PC, and mars their impartial image in the eyes of a common man. The first provision which says "Each full-time member of the Commission is entitled to be paid a salary to be fixed by the Governor in Council" virtually provides the executive with a carte blanche to fix the salaries of the members and vary them according to their sweet will, from time to time. In this behalf therefore we wish to suggest that the above provision contained in Section 24(1) of the Act must be amended to read: "Each full-time member of the Commission is entitled to be paid salary to be fixed by the Parliament, from time to time."

According to the second provision hampering the independence of the entire Commission as well as the PC, "Such officers and employees as are necessary for the proper conduct of the work of the Commission shall be appointed in accordance with the Public Service Employment Act" [Section 26(1)]. This provision in effect implies that whenever the commission needs a new post, it must approach the Treasury Board for final approval. The following facts, drawn from the first report of the Commission, clearly

<sup>&</sup>lt;sup>3</sup>For a discussion of the concept of ombudsman see: G.B. Sharma, "The Office of the Ombudsman in Nova Scotia Province: A Conceptual-Empirical Analysis", *Indian Journal of Public Administration*, Vol. XXIV, No. 4, 1978, pp. 1100-1129.

<sup>&</sup>lt;sup>4</sup>The addition of the word 'full-time' is very essential in our view because the present provision of the Act leaves a good deal of possibility of the appointment of a part-time member as the PC.

indicate as to how the above provision helps the executive temper with the independence of the commission. The report says:

By a decision of the Treasury Board, the Canadian Human Rights Commission has been allocated \$ 3,000,000 for fiscal year 1978/79 and 106 positions represented by 84 staff years. Both the amount of money and allocation of staff years are considerably less than we requested.... Adequate classification of positions is a continuing battle and, although we are satisfied with many levels, our operative positions are classified at a lower level than we believe appropriate to their role.<sup>5</sup>

Another provision of the Act lays down that "The Commission may make by-laws for the conduct of its affairs...." [Section 29(1)]. Strangely, however, the autonomy granted to the commission by the above provision is completely taken away by a subsequent provision contained in the same section. The subsequent section says: "However, no by-laws made....shall have effect unless approved by the Treasury Board" [Section 29(2)].

Last but not the least, the following provision, perhaps, goes the longest way in tarnishing the image of the commission and the PC as the independent defenders of the peoples' information rights against the executive. The provision in question reads:

The full-time members of the Commission are deemed to be persons employed in the Public Service for the purposes of the *Public Service Superannuation Act* and to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulation made under section 7 of the Aeronautics Act (Section 30).

How can an institution, whose personnel's entire terms and conditions of employment are controlled and governed by the executive to this extent, afford to act independently of it? And even if it really does, what is the guarantee that a man in the street would believe it to be true. In regard to such grievance handling mechanisms it is not only sufficient to ensure their independence in spirit but also in the letter of the law. This, unfortunately, has not been done in regard to the Canadian Human Rights Commission and the office of the PC.

Having examined the foreging provisions of the Act which have significant implications for the status and the role of the PC, we intend to examine the provisions contained in part IV of the Act which is our main concern in this paper.

## PART IV OF THE ACT EXAMINED

Before we take up a discussion of the various important sections contained in part IV of the Act, it may be useful to make two preliminary remarks. First, part IV of the Act deals with 'federal information banks'. It places obligations on departments and agencies that hold federal information banks and it gives right of access and correction to individuals with regard to information held about them in those banks. A federal information bank has been defined as a store of records that contains personal information about identifiable individuals, and that is used for an administrative purpose. Second, with the enforcement of part IV of the Act, Canadian citizens and legal residents are, for the first time, guaranteed the right of access to personal information about them held by the federal government departments and agencies, as well as control of the use to which this information is put and its accuracy.

According to the Act there shall be a minister incharge of federal information banks, who shall cause to be published on a periodic basis, a publication setting forth the name or identification of each information bank, the type of records stored therein, the derivative uses of those records and such other information as is prescribed by the regulations. It is also the responsibility of the minister designated incharge of the federal information to ensure that the federal information bank index so prepared is made available throughout Canada in a manner commensurate with the principle that every individual is entitled to reasonable access to it so as to be able to know its contents. [(Section 51(1)(2)]. Accordingly, the minister incharge of the Treasury Board has been designated as the minister responsible for the preparation and publication of the federal information bank index. An index of federal information banks the first in the series, was released by the minister on March 1, 1978. It presented a complete inventory of all personal information banks held by the federal government-both internal files on government employees and information banks relating to the public at large. The publication lists all the federal information banks that are held by 89 federal departments and non-commercial agencies specifically mentioned in the schedule to the Act.

The index has been organised by departments and agencies. Each section relating to a department or agency begins with a short description of the responsibilities and activities of that department, especially as they relate to personal information. This short introduction is followed by a detailed description of every information bank.

Each information bank is identified by a unique number, a title, a short description of contents and a list of derivative and non-derivative uses of the information contained therein. Derivative uses are defined to be those for which the information was compiled, whereas non-derivative uses for administrative purposes, must be authorised by law or else, agreed to by

the individuals themselves.

The index publication is available in post offices across Canada, together with record access forms to provide the initial means of access. Some agencies have also arranged to display the index on their premises. While the law allows for the curtailment of full description of banks on grounds of national security or defence or certain other grounds, being mentioned below, all federal information banks must be listed. There are to be no secret banks.

Having dealt with the federal information bank index at such a length it might be interesting for us to explore the rights conferred by this Act upon the individuals.

# Rights of Individuals Under Part IV

The Act gives individuals the right to know if there is any information about them in a federal information bank listed in the index, to know the uses made of that information, to examine their records, to request corrections to their own records where they believe there is an error of omission, or to require a notation to be made to their own record where the department or agency does not agree that a correction is justified. They also are to be consulted by the government agency before information provided by the individuals is used for purposes which are not consistent with the purpose for which it was originally provides [(Section 52(1)(2)]. In practice any individual seeking access to personal information is required to complete the record access form which is available with the index publication in post offices. A separate form is required for each information bank which the individual wants to access. The person making the request mails the completed form to the address for that particular information bank which is provided in the index. The government department/or agency must mail either a copy of the material on file or information on where the material is available for scrutiny within 30 days.

Since part IV of the Act is concerned with the protection of privacy, it is felt necessary to balance the ease with which persons can gain access to their own files with safeguards to protect sensitive personal information from being made available to unauthorised individuals. Thus, where a file is sensitive, suitable identification of the requestor is required. Where it is very sensitive, involving criminal records, for example, the person making the request may be asked to come in person to look at the material. If a person lives in Calgary and the file requested by him is in Ottawa, the department in question will make arrangements to have the material sent to either its own Calgary office, if there is one, or to the Calgary office of another department with whom it has an agreement for assistance in such cases.

# Administration of Part IV

As far as the administration of part IV of the Act is concerned it may be

pointed out that the ministers of government institutions that hold federal information banks are responsible for its implementation and coordination in the departments and agencies they have responsibility for. They are responsible for the approval of exemptions and receive reports of investigation from the PC and take the appropriate action.

Besides, each department and agency has appointed a privacy coordinator whose task it is to ensure that the provisions of part IV of the Act are known and are being observed throughout the department or agency.

However, the responsibility for the overall administration and coordination of part IV of the Act is that of the Treasury Board. Not only is the Treasury Board responsible for the index publication as pointed out above, it is also responsible for preparing guidelines and procedure manuals for the implementation of part IV of the Act.

The Treasury Board is further responsible for the coordination of the federal information banks. Since all collection of personal information implies some intrusion on individual privacy, the Act requires new controls for the governmentwide review of all use that is being made of existing information banks containing personal information, as well as special procedures for approval of new or modified banks. The purpose of these new controls is to eliminate unnecessary collection and ensure additional protection of personal information. In due course, procedures are intended to be established to implement these controls and to eliminate, for example, unnecessary duplication of information demands upon individuals by different government agencies. Unlike the other provisions of the Act, the coordination function applies to all personal information, whether it applies to statistical purpose or decisions related to individuals. Forms used for collecting information from individuals have got to be registered. Similarly, individuals must also be informed of the purpose for which information is being collected in relation to the published index.

In case, however, any individual has any difficulty in enjoying the information rights conferred on him by part IV of the Act (and referred to above), he or she can approach the PC for the redress of a grievance or for necessary help.

## THE OFFICE OF THE PC

Section 58 of the Act constitutes one of the most significant provisions contained in part IV. It deals with the functions, procedure and powers of investigation of complaints conferred upon the PC. Hence a detailed examination of this sections seems to be appropriate on our part.

The Functions of the PC

The PC shall receive, investigate and report on complaints from individuals who allege that they are not being accorded the right to which they are

entitled under this part in relation to personal information concerning them that is recorded in a federal information bank [(Section 58(1)]. Nothing however shall prevent the PC from receiving such complaints and investigating them as are submitted not by an aggrieved individual but by a person authorised by him to act on his behalf [(Sub-section (2)]. In regard to the manner of conducting investigations, it has been laid down that every investigation by the PC shall be conducted in private [(Sub-section (3)]. It has been further specified that while conducting an investigation it is not necessary for the PC to hold any hearing and no person is as of right entitled to be heard by the PC. But if at any time during the course of an investigation it appears to the PC that there may be sufficient grounds for making a report or recommendation that may adversely affect any person or any government institution, the PC, before completing an investigation, shall ensure that reasonable measures have been taken to give that person or institution full and ample opportunity to answer any adverse allegation or criticism and to be assisted and represented by counsel for that purpose [(Sub-section (4)].

## The Powers of the PC

The PC has, in relation to the carrying out of an investigation, the powers of a human rights tribunal under part III<sup>6</sup> and, in addition to those powers, may, subject to certain limitations as the Governor in Council in the interest of national defence and security may prescribe, enter any premises occupied by any government institution concerned in the investigation and carry out therein such inquiries as the commissioner sees fit [Sub-section (5)].

Unfortunately, however, the PC's role in regard to investigation of complaints is largely restricted and made dependent upon the discretion of the appropriate minister in relation to a government institution by Section 54 of the Act. Although the existence of all government information banks must be made known, the Act provides ministers of the crown with the discretion to refuse access to a record contained in an information bank or a certain part of such record when, in their opinion, the record contains information which, if made known:

- —might be injurious to international relations, national defence or security or federal provincial relations;
- -would disclose a confidence of the Queen's Privy Council for Canada;
- —would be likely to disclose information obtained or prepared by any government institution or part of a government institution that is an investigative body

<sup>&</sup>lt;sup>6</sup>Powers of human rights tribunals to be appointed by the Human Rights Commission from time to time have been dealt with under Sections 39 to 46 of the Canadian Human Rights Act.

- -in relation to national security
- —in the course of investigation pertaining to the detection or suppression of crime generally, or
- —in the course of investigations pertaining to the administration or enforcement of any Act of Parliament;
- -might, in respect of any individual under sentence for an offence against any Act of Parliament
  - —lead to a serious disruption of that individual's institutional, parole or mandatory supervision programme.
  - —reveal information originally obtained on a promise of confidentiality, express or implied, or
  - —result in physical or other harm to that individual or any other person;
- -might reveal personal information concerning another individual;
- —might impede the functioning of a court of law, or quasi-judicial board, commission or other tribunal or inquiry established under the Inquiries Act; or
- —might disclose legal opinions or advice provided to a government institution or privileged communications between a lawyer and client in a matter of government business [(Section 54 (a)(b)(c) (d) (e) (f) (g)].

The exemptions from the access, referred to in the above section, are undoubtedly capable of rendering the PC substantially ineffective in the performance of her duties under the Act for the following two reasons. First, the task of prescribing the exemptions from access has been left completely with the ministers of the crown. Thus, what sort of information would the PC's clients have access to, is to be decided not by the PC but by the minister acting in his discretion. Second, the list of exemptions is not only longish but also fairly vague and ambiguous. Nowhere in the Act have the terms, 'national security', 'international relations', etc., been defined. Consequently, depending upon his judgement a minister of the crown may enfold anything that he wants within the ambit of these omnibus terms and deny any person a right to personal information. To remedy the provision regarding exemptions we intend to suggest the following. First, the discretion to decide about the exemptions should be vested in an independent body like the Supreme Court of Canada rather than in the appropriate minister.<sup>7</sup>

<sup>&</sup>lt;sup>7</sup>After a ruling by the House of Lords in 1968 the doctrine of *Crown Privileges* has been drastically modified. Under the changed situation what information could be withheld in the public interest is to be determined by the courts and not by the minister. For recent developments in regard to administrative secrecy in Britain See: D.C. Rowat, *Administrative Secrecy in Developed Countries*, New York, Columbia University Press, 1978. Essay on U.K. by R.E. Wraith, pp. 183-210.

Second, the omnibus terms such as national defence should be clearly defined in the Act through an amendment. Unless this is done, the Act in general, and part IV in particular, shall hardly be of much avail to the people.

If a person who intends to utilise the services of the PC is lucky enough to cross the hurdles posed by these exemptions, the PC might be able to investigate his or her complaint(s). After the conclusion of an investigation, however, if the PC finds that the complainant is not being accorded a right to which he or she is entitled under this part in relation to personal information concerning him recorded in a federal information bank, the PC shall provide to the appropriate minister in relation to the government institution that has control of that information bank a report containing:

- —the findings of the investigation and any recommendations that the PC considers appropriate; and
- —where appropriate, a request that, within a specified time therein, notice be given to the PC of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken [(Section 59(1)].

At the same time, not to let the complainant guessing as to what is happening to his complainant, the PC is also obliged to report to the complainant, or to a person authorised by the complainant to act on his behalf, the findings of the investigation of a complaint. But in a situation where a notice has been requested of action taken or proposed to be taken in relation to recommendations of the PC, arising out of the complaint, no such report shall be made by the PC until the expiration of the time within which that notice is to be given to her (Sub-section (2)]. But in a situation where a notice has been requested of action taken or proposed to be taken in relation to recommendations of the PC and no such notice is received within the time specified for it, or the action described in the notice is inadequate or inappropriate or will not be taken in a reasonable time, the PC shall so advise the complainant and may include in the report such comments on the matter as she thinks fit [(Sub-section (2.1)].

The PC shall, within five months after the end of each year, and such other times as are appropriate, transmit to the Minister of Justice a report on the activities of the office since the date of last such report. And the Minister shall cause each such report to be laid before parliament within fifteen days after its receipt or, if parliament is not in session, on any of the first fifteen days after the commencement of its sitting. In any report submitted by the PC to parliament, the PC shall take every precaution to avoid revealing personal information and any matter which might relate to any of the exempted items mentioned by us above [(Section 60(1)(2)].

A discussion of some of the general provisions as well as the provisions contained in part IV of the Act above shows that they create quite a weak

institution, that is, the office of the PC, for the protection of peoples' information rights. What kind of impact does it have on the performance of the role of the PC is a question worth looking into. This is what is being attempted below.

## THE PC AS AN INFORMATION OMBUDSMAN

Although one may not quite agree with the applicability of the ombudsman concept to the position of the PC, some of the provisions of the Act like removal by the Governor in Council on an address of the two Houses of Parliament, do bestow upon it the semblance of a specialised ombudsman. We are, therefore, convinced that it would be really worthwhile to examine the role of the PC in the light of the ombudsman rhetoric.

Most of the rhetoric about the need for an ombudsman is rather vague about the kinds of matters citizens or people would like to bring to him. But that rhetoric's dominant theme is that he is a 'peoples' protector' against the depredations of government. By virtue of its universal accessibility and expertise in public administration, the ombudsman is able to provide speedy justice to the citizens against public administration without any extra cost to them. No doubt, this vague rhetoric of ombudsman as the 'peoples' defender' becomes still less intelligible when the scope of an ombudsmanlike official is confined to a specialised area. Nevertheless, it perhaps constitutes the only logical criterion for analysing the role of the PC in a critical manner. For a detailed examination of the PC's role in the light of the rhetoric of the 'peoples' defender' one must try to seek answers to the following questions: 'How many people make use of the services provided by the PC and in what manner?' 'How many of those who approach the PC for help are finally helped by her and in what manner?' 'Who seeks her help?' 'What sections or regions of the Canadian society do PC's clients come?'

#### WHO AVAILS OF THE PC'S SERVICES?

In order to examine the questions raised above let us have a look at the nature and volume of work handled by the PC since the inception of her office. An examination of this issue is necessary because, 'what if Canada had a PC and nobody ever utilised her services?' Fortunately enough, that eventuality never arose in relation to the office of the PC. Requests by people for information had begun pouring in four months before the PC's office commenced its functions. Similarly, complaints had also started flowing in within one month of the inauguration of the PC's office. Table 1(A) shows the total number of requests received by or in behalf of the PC during April, 1978 to July, 1979. The Table indicates that whereas the number of requests received from the people varied between a minimum of 10 to a maximum of 127 during 1978, the corresponding figures for the six months of 1979 under

report were 57 to 76. In overall terms, whereas 611 requests were received by or in behalf of the PC in 1978 the corresponding number for six months of 1979 was 391. On an average, a large number of requests per month were received during 1979. Likewise, Table 1(B) shows that during the first nine months of 1978 a comparatively larger number of complaints were submitted to the PC by her clients than those during the subsequent seven months of 1979. The range of complaints showed a distinctively downward trend during 1979 in comparison with that of the year 1978. In overall terms, a total of 576 complaints were submitted to the PC during 1978 and 216 during 1979. A comparison of Table 1(A) and 1(B) indicates an interesting trend in regard to the ratio between the requests and complaints received by the PC. The data ostensibly give the impression as if there is an inverse relationship between the number of requests and complaints received by the PC during the years 1978 and 1979. When the number of monthly requests received by the PC happens to be high, as was the case in 1978, the number of complaints goes down. Conversely, when the number of requests goes down in 1979 the number of complaints goes up.

Unfortunately, however, we are hardly in a position to offer any satisfactory explanation either in regard to the trend referred to above or the monthly fluctuations in the number of requests, on the one hand, and the number of complaints, on the other. Similarly, we also do not have any scientific criterion or criteria for judging whether the average level of complaints and requests submitted to the PC during the period under report is high or low. Nevertheless, looking to the experiences of other countries

TABLE 1A REQUESTS RECEIVED BY THE PC DURING APRIL 1978 TO JULY 1979

Month	1978	1979
	No.	No.
January	8 A	71
February	28 (19 )	63
March	127	57
April	101	62
May	, <b>55</b>	76
June	70	62
July		N.A.
August	30	N.A.
September	43	N.A.
October		
November	43	
December	27	세계 계계 공
Yearly Total	611	391
X	51	65
Grand Total		1,002
		grander, og i joka statistika

Source: Information Supplied by the Secretariat of the Privacy Commissioner, Ottawa.

during the initial years of the implementation of their general ombudsman plans and those of the provincial and other ombudsman plans in Canada, the average number of complaints and requests received by the PC appears quite high. Such an assertion on our part seems to be appropriate and justifiable, especially in view of the restricted and specialised jurisdiction of the PC.8

TABLE 1B COMPLAINTS REGISTERED BY THE PC DURING APRIL 1978 TO JULY 1979

1978		1979	
Month	No.	Month	No.
April	54	January	61
May	72	February	38
June	114	March	32
July	93	April	12
August	94	May	32
September	38	June	19
October	33	July	22
November	47	August	N.A.
December	31	September	N.A.
Yearly Total	576		216
X	64		39
Grand Total			792

Source: As in Table 1A.

We might further add that the act of approaching an agency like the PC, on the part of a person, for help is a demand behaviour. Hill was perhaps the first social scientist who attempted to develop a classification scheme for the categorisation of demand behaviour such as the act of complaining. According to him, complaints, especially to an ombudsman, may be classified into two broad categories: the 'offensive' complaints and the 'defensive' complaints. If the complainant wishes either to extract something from the department or to criticise an action or the quality of an action it has taken, his complaint takes the form of an offensive demand. But if he simply wishes to defend or protect himself against an action or contemplated action by the bureaucracy and lodges a complaint, his complaint is of a defensive nature. After a considerable amount of thinking we reached the conclusion that the classification—'defensive' and 'offensive' complaints—could be gainfully employed by us for analysing the role of the PC in the light of the ombudsman rhetoric. With this intention, we thought that we could treat the complaints submitted by the PC's clients as the 'offensive' complaints and the requests

<sup>&</sup>lt;sup>8</sup>For one such provincial experience cf: Sharma, op. cit., p. 1119.

for information as the 'defensive' complaints. If the rhetoric of 'peoples' defender' is to hold, a vast majority of complaints submitted to the PC must be of a defensive nature rather than of being offensive. The last rows of Tables 1(A) and 1(B) respectively show that this was exactly the case. On the basis of these facts therefore we could argue that the PC has really been acting as the 'peoples' defender'. Her role, so far, has clearly been that of the personal information ombudsman of Canada.

The foregoing facts however tell us little about the actual number of complaints redressed by the PC and the final consequences of the latter's action in regard to those complaints. A cursory look at the data depicted in Table 2 gives us the answer to the question raised above. It shows that a vast majority of complaints remain pending during the month of their submission or may be even longer. The percentage of complaints that has remained pending during the month of their submission ranges from a minimum of 66.6 to a maximum of 100. Needless to add that the percentage of complaints in which either a satisfactory explanation or other necessary assistance has been given to the complainant is extremely low. By and large, equally low has been the percentage of cases in which a final resolution of the complaint has taken place or proven justified within the same month. But the element of delay hardly has anything to do with the efficiency of the PC or her secretariat. It is in fact to a very large extent inbuilt in the Weberian concept of bureaucracy as well as in the provisions of the Act itself. Section 59(2), referred to above, provides sufficient opportunity to the Canadian bureaucracy for delaying their response to the queries received from the PC. The net result therefore is that prompt remedial action by the PC takes place in a marginally small number of cases. The delay on the part of the PC in the disposal of peoples' grievances might have been the main cause of the lower number of complaints to her during 1979.

Having looked at the numbers of requests and complaints submitted to, and the manner in which they were disposed of by the PC, it seems logical to ask: 'Which agencies or organisations of Canadian public administration have been the targets of larger number of complaints and why?'

## THE MAJOR TARGETS OF COMPLAINTS

During the period—April, 1978 to July, 1979 (both months inclusive), not all of the within-jurisdiction or scheduled agencies have been the targets of complaint by the PC's clients. Of the 89 scheduled agencies of the federal government only 34 were actually complained against. And out of these 34 a vast majority, that is, 24 agencies, accounted for less than ten complaints each during the entire period. We, therefore, arbitrarily decided to treat these

<sup>&</sup>lt;sup>9</sup>These agencies have been referred to as the scheduled agencies because of their specific mention in the schedule to the Human Rights Act.

Table 2 MODE OF DISPOSAL OF COMPLAINTS BY THE PC DURING APRIL 1978 TO JULY 1979

	Total		18* 111 12 7 7 7 7 7 7 7 7	, <del>, ,</del>	1
	1	July	9	. 4	
1717		June J	1 1 3 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		
CICI TOPO		May J	E     40	2	
		Apr N	31   1	1	
		Mar A			ç
			1   1   1   1	1	22
		n Feb	388		œ
	979	,	× 4 2     11	-   ;	ç
, 020	1978-1979	, Dec	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1 2	7
		Nov	1	1 1	ř
		Oct	111111811	33	1
	1	Sep	2   1   2	38	
		Aug 7	1   1   8	94	
			1   2   1   5	93	
	- 1	3	6   4   101   10	120	-
	Man		100 8   8 1   49	72 1	
	Any	:	1 1 2 1   2 4 1	54	
			<u> </u>	Į,	
		ed	Explanation Assistance Referral Resolved Pending Withdrawn	Column Total	
:		Justified	Explanation Assistance Referral Resolved Pending Withdrawn	Colum	

\* Includes 3 complaints justified.
† Includes 7 complaints justified.
† Includes 8 complaints justified.

24 agencies as minor targets of complaint and the remaining ten as the major.

Table 3 summarises the entire position regarding the number of complaints accounted for by each one of the ten principal targets of complaints. It is absolutely clear from the data that the Canadian Penitentiary Service accounted for the highest percentage of complaints not only among the principal targets of complaints but, also, in overall terms. The Royal Canadian Mounted Police accounted for the second highest number of complaints, that is, over 10 per cent. On the whole the ten agencies accounted for 703 complaints or 88.7 per cent of the total complaints submitted to the PC during this period. The remaining 24 agencies accounted only for the remaining 11.3 per cent complaints. These facts therefore provide clear guidance to the Treasury Board (the principal administrative agency responsible for the implementation of part IV of the Act) as to where it should concentrate its main efforts for achieving substantial results in regard to the freedom of information rights of the people.

TABLE 3 MAJOR TARGETS OF COMPLAINTS TO THE PC BY RANK ORDER DURING APRIL 1978 TO JULY 1979

Agency-Name	No. of Complaints	Per cent Complaints		
Canadian Penitentiary Service	465	66.1		
Royal Canadian Mounted Police	72	10.2		
Dept. of National Defence	38	5.4		
Canadian Employment & Ins. Comm.	37	5.2		
National Parole Board	27	3.8		
Public Service Commission	15	2.1		
Dept. of National Revenue (Tax.)	13	1.8		
Dept. of Veterans Affairs	13	1.8		
Dept. of National Health & Welfare	12	1.7		
Dept. of National Justice	11	1.5		
Total N	703			
Percentage of Grand Total of Complain	nts (88.7)			

SOURCE: As in Table 1A.

## COMPLAINTS AND INSTITUTIONAL CLASSIFICATION

In order to understand why certain types of agencies (like the one referred to above) are targets of greater complaints than others, it might be hypothesised that the organisations or agencies that come into more direct contact with the public are normally likely to be subject to greater complaints by people than others which come into less direct contact. To It may be further

hypothesised that even among the agencies coming into more frequent contact the ones charged with 'secretive-regulatory' kind of work, e.g., police, taxation, correctional services, etc., are likely to surpass others belonging even to the same category. While studying the 'client-public agency' relationship Hill developed a threefold typology: the 'client-serving' organisations, the 'client-attending' organisations and the 'non-client-oriented' organisations.<sup>11</sup> It might be quite appropriate for us to employ the same typology for examining the 'client-agency' relationship in the context of the role of the PC. While doing so, "in more specific terms, we could hypothesise that the 'client-attending' institutions would account for the largest number of complaints because of the often aversive nature of their contacts with the citizens, that 'client-serving' would be the second and that non-client oriented would rarely offend the public."<sup>12</sup>

For examining the aforementioned specific hypothesis we classified the 30 federal agencies complained against by the PC's clients (according to the predominant nature of their responsibilities) into the three categories. The agencies belonging to each one of these categories together with the number of complaints against each one of them are shown in Table 4. As predicted, fewer—74 or 9.6 per cent—complaints were filed against non-client-oriented agencies even though that classification included exactly the same number of agencies as did the other two. The distribution of the remainder complaints among the ten client-serving and the ten client-attending agencies also fulfilled our expectations. Whereas the client-serving agencies accounted for 105 or 13.7 per cent complaints, the client-attending, 588 or 76.6 per cent, of the total number of 767 purposively sampled complaints. In overall terms, the thirty sampled agencies accounted for nearly 96.8 per cent of the total number of 792 complaints submitted to the PC during the period under report. Hence, this aspect of our analysis of the facts also substantiates the role of the PC as the personal information ombudsman,

Nevertheless, our examination of the PC's role would remain incomplete unless we deal with the most significant aspect of it, that is, "Who complains to the PC and why?"

## WHO COMPLAINS AND WHY

Now since we know how many requests and complaints are submitted to the PC and against which agencies are these complaints directed, we must proceed to examine the question—'who uses her office?' The two issues—how many complaints are submitted and against whom—are interrelated. The one cannot be properly and fully examined and interpreted without taking into account the other. In order to make the theoretical focus of our paper

<sup>&</sup>lt;sup>11</sup>For a rationale underlying this classification see: Larry & Hill, op. cit., pp. 89-90. <sup>12</sup>Ibid., p. 91.

Table 4 CLASSIFICATION OF COMPLAINTS SUBMITTED TO THE PC BY AGENCY TYPES DURING APRIL 1978 TO JULY 1979

	1.	38 11 2 2 2 1 3 8 8 3 3 8 9 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	74	(9.6)
Non-client-oriented agencies	Name	Dept. of National Defence Dept. of External Affairs Dept. of Justice Dept. of Industry, Trade & Commerce Privy Council Office Dept. of Solicitor General Dept. of Public Works Ministry of Transport Dept. of Secretary of State		
ies	No.	465 13 2 2 3 3 7 7 7 7 7 7 7 6 6	588 (76.6)	
Client-Attending Agencies	Name	Canadian Penitentiary Serv. Dept. of National Rev. (Tax.) Canadian Radio & TV Comm. Dept. of Indian & Nor. Aff. Dept of Post Office Public Service Commission Royal Can. Mounted Police R.C. (Customs) Dept. of Supply & Services		
Client-Serving Agencies	Name No.	Can. Mortgage & Housing Corpn. 3 Can. Employment & Ins. Comm. 37 Dept. of Agriculture 1 Dept. of Consumer & Corp. Aff. 4 National Harbours' Board 5 Dept. of Nat. Health & Welf. 12 National Parole Board 27 Dept. of Veterans Affairs 14 Unemployment Ins. Commission 2 Total 105	N 767 . (13.7)	Source: As in Table IA

rather explicit, it might be argued that the PC's clients (i.e., her complainants) are involved in a pattern of consumption of 'politco-legal' services which could be labelled as demand behaviour. Because they essentially define the PC's institutional parameters, identifying the clients is of crucial importance. Whom we would expect to complain to the PC actually depends upon our perception of what it means to complain. All that we could be cocksure about the complainants is that they were themselves unable to, or, incapable of, reckoning with the administration. Hence they wished a 'trouble-shooter', that is, the PC to come to their rescue. Such a behaviour of complaining on their part may be subjected to two divergent interpretations in this particular context: (i) complaining to the PC is an act of assertion of one's fundamental human 'right to know'-that except for jurisdictional barriers to access, her clients should represent a fair cross-section of the Canadian populace; or (ii) complaining to the PC is a deviant act—hence her clients are most likely to be unrepresentative of various sections of the Canadian society. We intend to explore below, which one of the two interpretations fits the PC's role more appropriately.

In terms of the complainants' barriers to access to the PC these are relatively greater. To begin with, the very specialised and statutorily restricted jurisdiction of the PC may be recalled. The long list of exceptions prescribed under Section 54 of the Act (and reproduced above), really makes the services of the PC highly inaccessible for a person. In this behalf, we are quite inclined to fully agree with Ged Baldwin's view that:

But for the ingenuity and boldness shown by Inger Hansen, the present incumbent to the office of the PC, part IV of the Human Rights Act would not have been worth a damn. It would have been absolutely useless and unworkable.<sup>13</sup>

Thus, if somebody is able to utilise the services of the PC despite these rather extensive exemptions provided for in the Act, he or she should congratulate Inger Hansen and one's good luck.

Then, there are further barriers to access to PC in terms of the federal jurisdiction as well as the territorial jurisdiction. Only federal agencies specifically mentioned in the schedule to the Act may be complained against. But even in regard to these agencies, their offices located outside the territorial jurisdiction of the Canadian State cannot be complained against.

Nevertheless, the most common barrier—a written and duly signed complaint—does not apply in regard to the mode of complaint adopted by the

<sup>&</sup>lt;sup>18</sup>These views were expressed by Ged Baldwin (a P.C. M.P., and a renowned champion of the freedom of information and protection of personal privacy in Canada), at a seminar on freedom of information organised by the Department of Political Science, Carleton University, Ottawa, and the *Access* at the Carleton University, in November, 1978. The author participated in the seminar as a rapporteur.

PC. The PC accepts even telephonic, telegraphic and verbal complaints. At times anonymous complaints are also accepted by the PC so as to relieve a complainant from the fear of possible reprisal or retribution by an administrative authority.

The barrier or citizenship or a landed-immigrant status which the Canadian bureaucracy seems to apply ritualistically in almost all situations is also not applicable in regard to the complaints procedure adopted by the PC. All persons who have lawfully entered Canada may complain to the PC. Further, no fee whatsoever is charged by the PC from her complainants.

In sum, therefore, we could say that what makes the PC's services most inaccessible is basically the wide and vague exemptions provided for under Section 54 of the Act. Given the necessary will on the part of a person, except for the above section, no serious hurdle stands in his way towards submission of a complaint to the PC.

Hence, given the above jurisdictional and statutory impediments involved in complaining to the PC, we intend to find out what kind of complainants—deviant or representative—does such an arrangement produce.

## THE PC'S CLIENTS: A PROFILE

The following account regarding the social profile of the PC's clients is intended to answer the question whether the act of complaining to the PC is an act of assertion of one's rights or a deviant act pursued by a handful of unrepresentative Canadians.

First of all we intend to find out: from which geographic regions of Canada do the PC's clients come? Table 5 shows the distribution of the PC's clients over the Canadian provinces. The facts contained in the table show that a vast majority of the PC's clients come from Ontario although various other provinces are also represented; that in spite of the high population, residents of Quebec are represented in very small number. The two

TABLE 5	PROVINCIAL	DISTRIBUTION	OF PC'S	COMPLAINTS-
	AP	RIL, 1978 TO JUL	Y, 1979	

Province Territory	No. of Complaints	Per cent
1. Alberta	2	4.8
2. British Columbia		12.2
3. Manitoba	나는 남편으로 불통했다. 그런 그 말로 살았다.	9.7
4. Nova Scotia	말리아 있는 사람들은 호 <b>2</b> : 11 등 기가 하는 기가	4.8
5. Ontario	22	53.6
6. Quebec	[발표] 등의 등학교 <b>2</b> 학교의 발표하다.	4.8
7. Saskatechewan		2.4
8. Yukon & NWT.	2	4.8
9. Missing Values		2 4
N	41	

provinces, namely, New Brunswick and the Prince Edward Island (PEL), are not represented at all among our respondents. However, the relatively higher percentage of Ontarians among our respondents, on the one hand, and an equally lower percentage of *Quebecois*, on the other may be explained respectively in terms of: (1) a higher population of Ontario and the location of the PC's headquarters in Ottawa; and (2) our inability to prepare a French version of the questionnaire schedule. To a certain extent, the non-representation of the residents of New Brunswick might also be for the same reason as that in the case of Quebec. However, the non-representation of PEL cannot be attributed to any other reason except to the element of chance. Nevertheless, if we do not take the specific proportions into account, the facts do indicate that geographically speaking the PC's clients do come from all across the country.

In regard to the sex of the PC's clients Table 6 indicates that a vast majority of them—85.3 per cent—are males. Women are underrepresented. Since, however, the Act permits an aggrieved person to nominate any one else to petition on his or her behalf, we could safely assume that in order to save their female family members and friends from unnecessary trouble, many of the PC's male clients must have in fact represented them.

TABLE 6 PC'S CLIENTS DURING APRIL, 1978 TO JULY, 1979 BY SEX

Sex		No.	Per cent
Male Female		35 6	85.3 14.7
	N=	41	

Further, a look at the data contained in Table 7 shows that, in terms of their age, the PC's complainants come from all the four categories, that is, young, middle-aged, old and very old. Although there is a predominance of middle-aged persons among the PC's complainants, other age-groups are also represented. Especially, persons belonging to the old age group are also represented is a fairly high proportion among PC's clients. The reasons for the relative over-representation of the middle and old-age groups are not difficult

TABLE 7 AGE DISTRIBUTION OF THE PC'S COMPLAINANTS

Age-group	No.	Per cent
1. Young (below 25)	4	9.7
2. Middle-Aged (between 26 and 50)	23	56.1
3. Old (between 51 and 75)	13	31.7
4. Very Old (between 76 and 100)	<b>i</b>	2.4

to seek.<sup>14</sup> The years of life, between 26 to 75 years of age, perhaps constitute the period when one is more active in one's capacity as the subject or client of administration. Hence people belonging to these two age groups are bound to come into greater contact with the administration and, consequently, experience a greater amount of displeasure and discomfort at the hands of the latter. Logically speaking, therefore, they are likely to dominate the number of complainants of the PC or any similar authority.

In regard to marital status, there is a preponderance of married persons among the PC's clients. The remaining marital status categories are also represented though unmarried persons count for a larger number of them than the rest. Table 8 depicts the whole picture in regard to the representation of marital status categories among the PC's clients.

TABLE 8 MARITAL STATUS OF THE PC'S COMPLAINANTS

Status-Category	No.	Per cent
Married	23	56.1
Single	8	20.5
Widowed	2	5.1
Separated	5	12.8
Divorced	3	7.6
N=	41	

In a multi-cultural society like Canada, the representation of various linguistic groups among the PC's clients also assumes a great deal of importance. Table 9 shows that so far there has been a predominance of anglophones among the PC's clients. Part of this higher percentage of anglophones among the PC's clients might seem to be justified on account of their relatively higher percentage in the total population. But a greater part of this high percentage may more appropriately be attributed to our inability to prepare a French version of the questionnaire and the poor rate of our responses.

TABLE 9 MOTHER TONGUE OF PC'S COMPLAINANTS

Language	No.	Per cent
English	35	85.3
French		5.1
Hungarian	[14] [4] [4] [4] [4] [4] [4] [4] [4] [4] [	2.4
Ukranian		2.4
Urdu (Paki)		2.4
Chinese		2.4

<sup>14</sup>This is just an arbitrary classification of age groups. It is, however, in no way intended to offend our anonymous respondents some of whom may not quite like this classification.

We assume, a large number of our sampled non-respondents were from amongst the Frenchphones. But, in spite of the constraints under which this research effort was pursued, Table 9 does indicate the fact that the PC's respondents came from a varied range of linguistic groups.

Facts in regard to race/colour of the PC's clients show that the persons belonging to the white race, that is, the caucasians predominate the number of PC's clients. They account for nearly 92.6 per cent of the PC's clients. The figure seems to be somewhat high even while compared with the approximate proportion of white population in Canada. In any case, however, three other races/colour are also represented among the PC's complainants. Hence, ignoring their numbers or, their proportions in the Canadian population, we could still say that the PC's clients come from different racial/colour groups.

TABLE 10 RACE/COLOUR OF PC'S COMPLAINANTS

Race/Colour		No.		Per ce	nt
 White/Caucasian	 ***************************************	38	 	92.6	
Indo-Pakistani		1		2.4	
Chinese		1		2.4	
Ukranian		1		2.4	
Ukranian	 N=	41		2.4	

A probe into the religious affiliations of the PC's clients reveals that the Protestants account for the highest percentage of her clients, the Catholics for the second highest and the atheist for the third. Other religious groups like the Jewish, Buddhist, etc., are also represented. Table 11 on the whole gives the impression that the PC's clients come from a fair cross-section of the religious groups comprising the Canadian population.

TABLE 11 RELIGIOUS AFFILIATIONS OF THE PC'S COMPLAINANTS

Religion	No.	Per cent
Protestant	18	44.0
Roman Catholic	4) 12 m 1 m <b>9</b> . 14 m 1 m 1 m 1 m 1 m 1 m 1 m 1 m 1 m 1	22.0
Jewish	2	4.8
Budd <b>h</b> ist		2.4
Anglican	1	2.4
Orthodox		2.4
Yoga Karma	BELL 1885 회원 <b>의</b> 원조연한 최근	2.4
Atheist	8 . T. F. A. M. 8 . T. A. B. M. S.	19.5

A greater amount of heterogeneity, however, is evidenced by Table 12 depicting educational qualifications of the PC's complainants. The data in the Table indicate that those having below high school or high school and

bachelor's degree qualifications account for approximately the same percentage of the PC's clients. Besides these, those having a Master's or Ph.D. degrees are also represented but their numbers are not very significant. Nonetheless, the facts indicate that, in terms of their educational qualifications, the PC's clients come from a cross-section of various educational groups or levels.

TABLE 12 EDUCATIONAL QUALIFICATIONS OF THE PC'S COMPLAINANTS

	Qualification Level		No.		Per cen	t
	Below high school		9	 	22.0	
	High school		10		24.3	
	Bachelor's degree		10		24.3	
	Master's degree		4		9.7	
	Ph.D. degree		2		4.8	
	Others		5		12.2	
-		N=	41			

A cursory look at Table 13 shows that, in terms of their income levels, the PC's complainants come from a fairly heterogeneous section of the Canadian. The interesting fact that the Table brings out is that those with an annual income of less than \$5,000 and those with an income between \$21,000 to \$30,000 account for the same proportion of the PC's complainants. The remaining income categories are also represented among the PC's clients.

TABLE 13 INCOME DISTRIBUTION OF THE PC'S COMPLAINANTS

Income-Bracket	No.	Per cent	
Below \$ 5,000 p.a.	10	24.3	
Between \$ 6,000 and 10,000 p.a.	7	17.0	
Between \$11,000 and 20,000 p.a.	4	9.7	
Between \$ 21,000 and 30,000 p.a.	10	24.3	
Between \$ 31,000 and 40,000 p.a.	5	12.2	
Above \$41,000 p.a.	5	12.2	

A further probe into the social position of the PC's clients revealed that the 'lesser executive, professional and proprietorial' class accounted for the highest proportion among them. The class of 'higher executive, professional and proprietorial' class accounted for the second highest number of the PC's clients with the skilled workers class coming very close to it. Nevertheless, all of the remaining professional classes were also represented. Table 14(A) shows the entire picture in regard to status levels of the PC's complainants.

TABLE 14A SOCIAL STATUS OF THE PC'S COMPLAINANTS

Position	No.	Per cent
Higher professional, executive and proprietorial class	7	17.0
Lesser, executive, professional and proprietorial class	16	39.0
Clerical	3	7.3
Skilled workers	6	14.6
Semi-skilled workers	4	9.7
Missing values	5	12.2

TABLE 14B PROFESSIONAL AFFILIATIONS OF THE PC'S COMPLAINANTS

Profession	No.	Per cent
Administration/Management	10	24.3
Armed Forces	3	7.3
Computer/Financial Analyst	4	9.7
Consultancy	2	4.8
Engineering	1	2.4
Law	1	2.4
Medicine/Psychology/Psychiatry	3	7.3
Teaching/Research/Student	3	7.3
Self-Employed	2	4.8
Retired	3	7.3
Disabled	2	4.8
Others	2	4.8
Missing Values	5	12.2

Last but not the least, an examination of the professional affiliations of the PC's clients showed that those belonging to the administrative/managerial professions made the highest use of the service of the PC. Though a fair cross-section of professional people were represented among the PC's clients, their numbers were relatively small.

Hence the facts discussed above lend considerable amount of support to the first hypothesis: that the act of complaining to the PC is an act of assertion of one's information rights under part IV of the Act; therefore, the PC's clients come from a fairly representative group of the Canadian society.

The entire discussion of the role of PC in the light of the ombudsman rhetoric of 'peoples' protector' shows that despite the statutory constraints imposed upon the PC by Section 54, the PC has been able to play her role as the information or privacy ombudsman quite effectively.

In view of the foregoing discussion of the role of the PC what possible word of advice do we have for the Canadian people: Should we advise them to rejoice in the limited success achieved by the PC and therefore sit quiet or,

instead, caution them to rise to the occasion and take timely action. We suppose we would prefer to follow the latter course than the former in terms of our advice to our fellow Canadians. The piece of advice we intend to pass on to Canadians runs somewhat along the following lines.

The PC Government led by Prime Minister Clark, being in the first flush of power, seems to be currently very enthusiastic about building an open system of administration in Canada. That the law on freedom of information is among the highest priorities of the Clark Government is common knowledge in Canada today. Most likely, a draft Bill on freedom of information would be introduced in the very first week of the ensuing Fall 1979 session of the Canadian parliament. The political atmosphere in the country is surcharged with debates and discussions as to what shape the proposed law on freedom of information should take. In pursuance of their avowed intention to bring about an open system of administration the PC Government have also of late pronounced their intent to overhaul the Canadian Official-Secrets Act by the Spring of 1980.15 It is basically this archaic law based upon the British Official Secrets Act of 1911 which has served as the Canadian public servants testament while dealing with the peoples' requests for information. Whereas administrative practices and court judgements have brought about substantial changes in the operation of the British Official Secrets Act recently, no efforts whatsoever have been made in Canada to change this law during the last four decades. Thus the unfortunate combination of public servants official obligations with what was originally intended to deal with the problems of espionage has led to prescription of similar legal obligations upon the public servants and those considered a national security risk. Needless to add that this unimaginary combination in the official secrets law has had considerable intimidating effect upon the morale of public servants while parting with even routine types of information. Besides, to certain unscrupulous public servants and politicians the secrecy law comes quite handy to cover up their misdeeds.

Once however this law is overhauled, either by way of a clear definition of the public servants' information obligations or its complete separation from the law for controlling espionage, etc., much of the administrative secrecy would perhaps vanish in the natural course. But, in the meanwhile, the important thing for Canadians to remember is that they have to work hard to ensure that the proposed laws on freedom of information and official secrecy are: (1) enacted in very specific and clear manner; (2) that only minimum and unavoidable exemptions are prescribed under them; and (3) that they are in tune with the requirements of an open system of administration. But they must not lose any time. In a nutshell, what we intend to suggest is: Hit the iron when it is hot. No sooner these three objectives are achieved, the task of the PC would be automatically smoothened to a

<sup>&</sup>lt;sup>15</sup>The Globe and Mail, Toronto, September 20, 1979.

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considerable extent. With minor changes in the provisions dealing with the powers and status of the PC, suggested by us above, the PC would be able to make a much stronger impact upon the functioning of Canadian public administration.

Should however the Canadians wish not to heed our advice, such an opportune moment would perhaps never return. With the passage of each day in their office both Clark and his colleagues would grow wiser about the advantages inherent in a closed system of administration and become less and less averse to such 'idiosyncratic' values as an open system of administration. The choice is entirely of the Canadian people, they may choose whatever they want. But they must not however forget that if they were to lose this opportunity, they would have lost it for a long time to come. <sup>16</sup>

## People's Right to Information

If government is to be truly of, by, and for the people, the people must know in detail the activities of government. Nothing so diminishes democracy as secrecy. Self-government, the maximum participation of the citizenry in affairs of state, is meaningful only with an informed public. How can we govern ourselves if we know not how we govern? Never was it more important than in our times of mass society, when government affects each individual in so many ways, that the right of the people to know the actions of their government be secure.

—Foreword, The Limited States, Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, 1966.

16In India, after the defeat of Mrs. Indira Gandhi and her Congress Party in the national election of March, 1977, the then Janata Party led by Shri Morarii Desai also started functioning with an equal amount of vigour and enthusiasm for restoring the civil liberties of the people and reforming administration. However, within less than a year of their experience in office both Desai and his other party colleagues realised that these measures were no good. It is alleged that in regard to coercing the Indian press and the media the Janata leaders did not lag far behind Mrs. Gandhi. Hence, this advice.

# The Open Government and Its Enemies (With Apologies to Karl Popper)

## K. Seshadri

NE OF the essential features of democratic government is the enlightenment of the citizenry which enables it to participate meaningfully in the political process. Participation could be positive in the sense of supporting the government in power in its actions or negative in the non-pejorative sense of the term, which means protesting and opposing the polices of the government in power. This participation may be at various levels of involvement. But the important thing is that the citizenry be well informed in order to make its participation a real input into the system. Hence it is that there should be freedom of expression which would include freedom of the press and other mass communication media which should become forums for free expression of views without let or hindrance and without the fear of hearing, 'the knock at the doors of one's house in the early hours of the morning'! The right to protest against the actions of a government is a fundamental right and a proper assertion of this right keeps the governments on the democratic path of not only being responsible but also responsive. The concept of civil disobedience of Henry David Thoreau from whom Gandhi developed the political movement of civil disobedience is an expression of this right.

The political system in a democracy works on a delicate balance and seeks to maintain this balance by acting on the enlightened and informed criticism. In order, therefore, to secure meaningful participation of the enlightened people, they should have access to all that passes in the administration, as otherwise, they will be reduced to the position of subjects. Thomas Jefferson asserted that people have the right to alter the government which becomes destructive, 'alter it or abolish it'. President Wilson went to the extent of asserting that there should be 'growlers and kickers'. "We have forgotten the very principles of our origin", he said, "if we have forgotten how to object, how to resist, how to agitate, how to pull down and build up, even to the extent of revolutionary practices, if it be necessary to readjust matters". I am deliberately quoting these two leaders and not any revolutionary leader only to emphasise the importance of dissent for the proper functioning of political leadership.

For all these declarations, in actual practice, governments seek to cleverly

conceal what transpires, and give out only such information as is good in the 'public interest' to be revealed. The questions that are pertinent here are: (i) What is public interest? Who is to decide what is in the public interest and what is against it? (ii) How to prevent the lurking danger of tyranny that thrives under secrecy? (iii) If the objective is to have informed citizenry, how can that be achieved without giving it access to all the transactions that the big government does in its name? If certain types of information are made available to the public at large, how to prevent the damage that might be caused to public tranquillity and national security? Before answering these questions, it is worthwhile to ponder over the dialectic of the coexistence of information explosion of the modern days and the non-availability of strategic and sensitive information.

In the following lines we shall deal with the factors that have led to this paradox.

## THE THEORY OF SEPARATION OF POWERS

This theory came in the wake of democracy so as to enable the different sections to act as check against each other's powers. In a multi-class society this guaranteed the equal representation in the sharing of power to every class. Montesquieu felt that the concentration of the powers of law-making and law-enforcing and law-interpreting in the hands of one person or a group of persons, either elected or nominated, would be the very definition of tyranny. In operational terms this theory requires certain sequence in the functioning of governments—that is, the legislature as the representative of the people at large should first debate and the debate should be an open debate. After fully debating any question, by a majority, it should pass the legislation which the executive has to then translate into action and submit itself to the judicial review in case there is a charge of excess or any other type of arbitrariness in so translating the will of the legislature. This has eroded. Executives have become powerful and very often bypass the legislature.

## POLICY-MAKING

The orthodox separation of powers is impossible and every student of political science knows how these three wings keep transgressing and poaching into the realms of the other. But the most important thing here is the ascendency of policy over legislation. This alters the old order of precedence. The executive lays down the policy in the administrative corridors and goes ahead pursuing this policy and, in course of time, seeks the ratification of the legislature for the action already launched. If it fails to obtain the legislative approval it quits, but this is rare, because of the functioning of the political parties. Mostly policies are decided upon elsewhere and they are very often ritualistically placed before the legislatures for this ex post facto

approval. The reason for this development is the complicated and highly specialised knowledge that is required to do the business of government in the modern days.

In the US, there has been an allegation that the executive has been successful in circumventing the provisions of the constitution, as stated in Article 2, Sec. 2 wherein the Senate is given the power of veto over commitments made to another country by virtue of treaty that it may enter into. The executive enters into what is called the 'executive agreement' which does not have any constitutional sanction. As an example of the proliferation of these executive agreements may be mentioned the following facts. In 1920 the US had entered into 25 treaties and only 9 executive agreements. But by 1968 it concluded 16 treaties and 266 executive agreements. By the end of 1971, it had a total of 947 treaties and 4,359 executive agreements.

The plea is that disclosures of certain actions of the executive would be prejudicial to the security of the state.

## SCIENTIFIC AND TECHNOLOGICAL REVOLUTION

Policy-making today even in a less advanced country cannot but be influenced by the advances in science and technology. The legislators are generally lay men who do not understand the complexities of the modern days and to go back to the days of Montesquieu is a far cry. Let me quote Robert A. Dahl.

It may have been realistic for Rousseau or Jefferson or the framers but it would be profoundly unrealistic today to expect citizens, or even highly educated ones, to have enough technical knowledge. Think of the complexities of current policy decisions: breeder reactor, B-I, Trident, Middle East, catalytic converter, inflation-unemployment trade-offs, rate of increase in money supply, costs and administrative problems of alternate health care arrangements, SST, Amtrack, limitations on artificial losses, outer continental shelf.... Most of the time—all of us are ordinary citizens without a great deal of technical knowledge about matters like these.<sup>1</sup>

One wonders whether many of our legislators have heard of some of these things. Modern governments cannot be run on emotional shouting regarding the introduction of Hindi terminology in the armed forces while the more important technical problems of defence stare us in the face nor can populistic rabble-rousers on cow slaughter or some such slogans take the society forward and assure better living to its people. One should think several times before

<sup>1</sup>Robert A. Dahl, "On Removing Certain Impediments to Democracy in the United States", *Political Science Quarterly*, Spring, 1977.

he pontificates to a gathering of experts on how they should proceed with their technical work.

This is not to plead in favour of meritocracy, but to stress the need for balancing democracy with technocracy. Linking roles have to be played by various intermediaries so that more and more information is made available to the citizens in general.

#### RISE OF THE EXECUTIVE

The world has travelled very far from where men like Washington and Jefferson left the US politics, and now political parties have come to stay. Partyless democracy as is advocated by our own leaders like late Jayaprakash Narayan and others is a far cry. Till that can materialise we are doomed to party life in politics. This, coupled with the highly technicalised nature of policy-making, has increased the power of the executive. The crescendo of executive high-handedness was witnessed in US during the Watergate crisis and in India during the emergency imposed by Mrs. Indira Gandhi. The key factor in both these cases is the secrecy of executive operation. Nixon invoked 'executive privilege' and refused to part with the tapes giving full details regarding the operations that were secretly and criminally conducted. 'Executive privilege' is enjoyed by the President of the US and by the executive officials accorded the right by the President. For a long time, there was no legal method by which this privilege could be denied to the executive officials. But in 1974, the Supreme Court made a landmark by establishing a precedent by a unanimous verdict ordering President Nixon to release the recorded tapes with allegedly criminal information [US vs. Nixon, 418 US 683 (1974)]. Mrs. Gandhi, not being under any such democratic obligation, could muzzle all opposition, gag the press which became servile, and bribe the intellectuals who in retrospect became great champions of freedom, and conduct all operations in secrecy with the help of organisations like the RAW. All these were with good intentions of giving India a tough government, since men like Gunnar Myrdal had accused India of being a 'soft state'. (This is again a misnomer because India was never soft to those who worked for transformation of the society, while it certainly was to economic criminals).

## ADMINISTRATIVE STATE

The enormous increase in the governmental activities in the modern age has won for it the sobriquet 'The big government'. Even in US the increase in the size of bureaucracy after the Second World War is too well known to be laboured. The nature of the bureaucracy and its resilience are also well known. While political leaders may come and go, administrators give the continuity and the brains trust for running the government and the result

is that normally it is at one's peril that any serious political leader can ignore their warning or refuse their encouragement and administer without consulting them. This is the era of 'administrative state', to put it in a nutshell.

Saying this does not mean that the administrators always can have their way merely because they have the records, precedents and the specialised knowledge with them coupled with an *espirit de corps*. Max Weber did not say anything like that though many would attribute this to him. Mrs. Gandhi in our country in the recent times showed how fragile this bureaucratic neutrality and fortitude can be if only proper rewards and punishments are exhibited in the show-case. The various chief ministers in many States are doing this with impunity. An atmosphere of fear and nervousness pervades and this takes the shape of civil service neutrality—with a vengeance.

Administration gives a cover to governmental actions since what transpires in the dark corridors of the bureaucracy normally is not made public. While decisions of a political nature are public decisions, the deliberations in the bureaucracy are generally 'confidential' or 'secret' or 'top secret', and so on. The civil servant is covered with an anonymity clause and the public have therefore no access to what transpires in their deliberations and what sort of 'note' they put up for the consideration of the political leader in the government. There is also no knowing whether the note that is put up is not put up after a considerable arm twisting by the political boss on promise of reward.

Thus the administration affords a cover to the policy maker from the prying eyes of the public critic. By a sleight of hand, as it were, all political decisions are converted into administrative decisions and thus rendered invisible to the public gaze. As Karl Mannheim said, the fundamental tendency of all bureaucratic thought is to turn all problems of politics into problems of administration.<sup>2</sup> Then they get converted into management issues.

Once a thing becomes administrative then the need for making it an open issue is overcome and the accessibility to the public is dependent upon the officials' whim. Quite usually, information is, 'classified' thus foreclosing any attempt at public examination.

The difficulty in clogging the legitimate channels through which information has to flow normally is that it finds illegitimate channels to flow. Information is like liquids, that is, you cannot suppress it. There is a Pascal's law of information! It will pass as rumour which in the long run defeats the very purpose for which information was suppressed. This was very clearly witnessed during Mrs. Gandhi's emergency regime, when through the draconian press restrictions normal flow of informaton was choked and rumours did the havoc. In the political system the feedback mechanism has to be well oiled so that administration can act in a way forestalling a potential danger.

#### PLEA OF SECURITY

In the name of defence or maintenance of public order, many a time administration keeps the public away from various types of information. It is not in the public interest that public should know about some of the happenings lest such knowledge should jeopardise national security or domestic peace.

It is generally agreed that certain types of defence information, both during a period of national emergency and even in normal periods cannot be divulged to the public. For example, like our Official Secrets Act of 1923 (updated to April 1974), every country has similar Acts to deal with defence secrets. As the report of the Press Law Enquiry Committee of 1948 (para 64) says:

It is a well recognised principle that matters, which must remain secret in the interest of the state, should not be allowed to be disclosed and this limitation of the right of freedom of expression has been accepted in the United Nations Conference on Freedom of Information and the Press.

Though a cursory reading of the Official Secrets Act of 1923 as amended in 1953 would reveal that it deals with espionage and punishment for it. there is a blanket clause in section V which brings wrongful communication within the mischief of the Act. All official information can be deemed as 'wrongful' if so required by the executive, bent on punishing either the press or the individual who exposes anything that happens in government that the government itself does not reveal. Thus even trivial and unimportant things can be marked secret—as one may find many circulars in the innocuous Ministry of Food and Agriculture, for instance. One can understand secrets that pertain to defence or public safety during genuine emergency. In a democracy people have a right to know and the press has a right to expose the misdeeds of the government. The professional honour of a paper is dependent on its capacity to expose secrets if such exposure is in public interest and it is the fundamental right of a citizen to know what his representatives are doing in his name. A well-informed citizenry is a guarantee against authoritarianism and corruption. As things are, what is happening in the country is that the unimaginative bureaucrat and the corrupt politician are reaping the benefits of the Act which is unchallenged by the public or the press that has been bought over. Even the parliament is kept in the dark. The Official Secrets Act read together with the service conduct rules complete the circle by which any divulgence of information to the public becomes an offence punishable in the courts of law.

Nobody would deny that the safety of the country ought to get precedence over an individual's right to know what happens in the portals of the secretariats. Every piece of information, by the ingenuity of the administrative interpretation, can become a security issue without its being even remotely connected to safety. Thus the citizen can have no access to any information except as permitted by the whim of the official concerned.

Let us see the cases of UK and the US in this regard. The first Official Secrets Act in UK was passed in 1889 which made it an offence to communicate information obtained by virtue of one's position as a civil servant. Again an Act to re-enact the Official Secret Act, 1889, with 'amendments' was passed in 1911 and another much more strict Act was passed in 1920. Though ostensibly these Acts were for the purpose of ensuring national security. in practice they were used against matters which could not be construed as espionage or violations of national security. A hangman named Pierrepoint was not permitted to publish his memoirs under threat of attracting the provisions of the Act! (Pakistan would for its own reasons may not permit the memoirs of Tara Masih\*, or his father would not have been permitted to publish his memoirs in which Bhagat Singh would figure). As alleged by Cecil H. King, the proprietor of Daily Mirror, these Acts are used to protect the reputations of the ministers (if they have any, that is) and, above all, of civil servants. One cannot accuse a civil servant and prove the charge because of the fact that one cannot get access to the document to deny it, though one has seen it and a minister may deny its existence.

Profumo of Christene Keeler fame issued to the Sunday Pictorial which was to serialise the memoirs of Keeler, a 'D' notice through the intervention of the head of the security service which in war time was used to forbidding publication in a newspaper anything that is calculated to foment opposition to the prosecution of the war effort.

By the Public Records Acts, for instance, documents are open for scholars for study after thirty years. Even there, some documents can be excluded.

The government and the senior members of the opposition are agreed on one thing: that the less the public knows about the process of decision-making the better. Whether this is understandable confusion of what is politically and administratively convenient with what is in the public interest may well be asked. One consequence of this, among many, is that the British citizen has less protection when decisions affecting his private rights are made than in many western countries.<sup>3</sup>

The words 'security' and 'public safety' are hard to define and their definition is always tilted in favour of the government which, as and when challenged, comes out with its own ingenious interpretations and in so doing not only denies the citizen his right to knowledge but covers up many an

<sup>\*</sup>Tara Masih was the professional hangman who hanged Mr. Bhutto and was paid Rs. 25. His father hanged Bhagat Singh.

<sup>&</sup>lt;sup>8</sup>Harry Street, Freedom, the Individual and the Law, Penguin Books, 1967, p. 232.

illegality or immorality or irregularity of the minister or civil servant.

Contrasted to this, in the US there is an incessant war, as it were, between the public and the press on the one hand and the government on the other, for a wider dissemination of information and nothing like secrecy is generally acceptable unless certain conditions are fulfilled. We shall rapidly go through the process by which this confrontation takes place. It is interesting to see the way the press and the public in US played their part in making the government an open government.

The constitution was conceived in the US on the basis of freedom of speech, press, and assembly.

The first amendment to the constitution prohibits any law from abridging the freedom of speech or press.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble; and to petitition the government for a redress of grievance.

This amendment is quoted because its scope was stretched and the whole edifice of the constitutional right of the people to know and the press's right to publish, was built.

From this it follows that if the people have a right to know they cannot be denied information that would enable them to participate and make the government responsibe to the public demands. It is a mandate that the government is a government of the governed and therefore the constitutional system requires that the people be adequately and honestly informed.

If this means the government must, by and large, be conducted in a gold-fish bowl, so be it, for in no other way can it retain the consent of the governed. The first amendment was conceived as a basic safeguard of the public's right to know as well as the press's right to publish. Without the first amendment—indeed the whole Bill of Rights\* we all know our Constitution would not have been adopted.<sup>4</sup>

Sub-committee of the Committee on Government Operations, House of Representatives, Ninety-second Congress, June 23, 24 and 25, 1971, pp. 3, 4.

<sup>\*</sup> From 1950s investigative work was going on, which resulted in 'significant amount of information...vital to the discharge of...constitutional responsibilities' being released. "Twelve years of solid investigative achievement were climaxed by the enactment by Congress of the 'Freedom of Information Act' (5 U.S. C. 552) which became effective on July 4, 1967. The legislation...has helped to open the doors of the bureaucracy to permit greater freedom of access to non-exempt types of information in countless numbers of cases over the past four years".

<sup>&</sup>lt;sup>4</sup>Hearings before a Sub-Committee of the Committee on Government Operations, House of Representatives, U.S., June 23, 24, 25, 1971, p. 10.

The Freedom of Information Act of 1966 (P1 89-487) lays down that all government papers, opinions, records, policy statements and staff-manuals are to be made available upon request unless they were covered by one or more of the following nine exemptions.

- 1. Specifically required by the executive order to be kept secret in the interests of national defence or foreign policy.
- 2. Related solely to the internal personnel rules and practices of the agency.
- 3. Specifically exempted from disclosure by statute.
- 4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
- 5. Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.
- 6. Personnel and medical files and similar files and disclosures of which would constitute a clearly unwarranted invasion of personal privacy.
- 7. Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.
- 8. Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, or
- 9. Geological and geophysical information and data, including maps, concerning wells.

The 1974 Amendment to the Act refers agencies to expedite release of information, facilitates citizen's access to courts to compel disclosures, and empowers judges to determine the propriety of any exemption.

An individual can take the matter to a court if the government refuses to disclose the sought information and the burden of proving that the sought information comes within the nine exemptions will be on the government.

In spite of these express provisions, there were complaints that a good deal of foot-dragging by bureaucracy, delay, excessive fee for data, cumbersome legal remedies, lack of involvement in decision making on request for data by public information officers, etc., were being practised.

The problem of classification of documents has been, therefore, rather thorny since the basis for classification and the criteria for the different gradations like confidential, secret and top secret, and then the declassification or downgrading, have been on the anvil for quite some time. A panel chaired by the Assistant Attorney General, William Rehnquist, was appointed to go into the question on classification and declassification of documents in January, 1971.

#### EXPOSURE OF THE PENTAGON PAPERS

As is common knowledge now, the whole issue of secrecy in government blew up with the publication of the so-called Pentagon Papers by the *New York Times* of the June 13, 1971 and serialised it on June 14 and the 15 when the Justice Department obtained a temporary court order restraining its further publication.

This study was commissioned by Robert S. McNamara, now of the World Bank, then Secretary of Defence. W.W. Rostow, McNamara and General Westmooreland were closely connected with Vietnam misadventure during Lyndon B. Johnson's period and the Pentagon Papers were commissioned by McNamara to study the policy decisions that dragged US into the Vietnam war.

Since in the US the newspapermen act much more dynamically and independently than their counterparts in India, whose integrity was on trial during the short period of emergency, there is always an attempt to dig out more and more information and place it before the public even at great personal risk. These Papers leaked out and the *New York Times* began serialising them. The first one was on the Gulf of Tonkin incident and it bore the classification 'top secret'. It concerned the period 1968. As stated earlier, there was a court order restraining further serialisation.

Pentagon issued a statement on June 14 saying that it was concerned as it was a disclosure of a highly classified information affecting national security. In fact it 'violated security'.

A couple of hours before the publication on June 14, the Attorney-General John Mitchell telegraphically informed the *New York Times* not to publish the news since it would cause 'irreparable injury to the defence interests' of the US. It also attracted the provisions of the Espionage Law. (One wonders what the Indian editors would have done under the circumstances assuming that they could lay their hands on such information!)

The New York Times refused to oblige the Attorney-General saying: "It is in the interests of the people of the country to be informed of the material contained in this series of articles."

Their attorney argued before the US District Judge that the order of prohibition by the court was 'a classic case of censorship' which is forbidden by the first amendment, which guarantees freedom of the press.

"A newspaper exists to publish, not to submit its publishing schedule to the US Government", argued Alexander M. Bickel, the attorney for the *Times*. In the Supreme Court six judges held in favour of the *New York Times* and three gave a dissenting verdict. William O. Douglas expressing the majority opinion said: "Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors".

The Republican Representative Paul V. McClosky said that the "issue of truthfulness in government is a problem as serious as that of ending the

war itself".

(Withholding the truth from the people cost both Profumo in England and later Nixon in US their position and prestige while withholding truth seems to be the only way to keep one's position, whatever the prestige, in India). Perhaps Lyndon B. Johnson's lament was right:

My problem is not with the Bureaucracy with a capital B, but with a few self-satisfied bureaucrats in the Defence Department who thought they knew what was going on better than the President. I barely knew or saw them yet there they were disagreeing with my policy and leaking materials to the press<sup>5</sup>.

Michael Harrington, an academician and Congressman gave his testimony to the aforesaid committee, which is worth quoting in this context to highlight the administrative subterfuges that enable them to convert insignificant things into matters of vital importance for national security and close it to the public.

To put it in another way, Congress is no longer an equal partner in the American democratic process on par with the executive and the judiciary. Instead, we have become political eunuchs in matters of foreign policy and defence.

Merely by classifying whatever it chooses, the administration can bar a Congressman from taking an active role in his constitutionally granted powers.

The public action of the Pentagon study has been a great service, but these mistakes never should have been allowed to proliferate. History is fine but, if a mistake has been made, the discovery of that mistake 2 or 3 years later offers the country little solace. The mistakes have been made in Vietnam and they cannot be undone. But had we the benefits of all the information perhaps minds may have changed earlier. That is a speculation, but there could have been fewer deaths—both American deaths and Vietnamese deaths....<sup>6</sup>

In 1972 President Nixon issued an Executive Order 11652 cutting the number of departments and personnel with power to classify 'top secret' requiring the department to show why a declassification would damage the country.

The final victory for a free press and citizen was the amendment to the Freedom of Information Act of 1974 (PL 89-487) which required the federal government and its agencies to make available to citizens on request all

<sup>&</sup>lt;sup>5</sup>Doris Kearns, Lyndon Johnson and the American Dream, New York, 1976, p. 299. <sup>6</sup>Hearings, op. cit., p. 227.

documents and records except those falling into certain categories which, by statute or trade or financial, personal, privacy considerations, are exempt. Court was given the power to go behind the 'classified' stamp on information sought by a citizen under the law. The Congress passed this legislation overriding the veto exercised by President Ford.

Still there is always the lurking corner for the executive to hide itself and carry on its activities without reference to the Congress, and withholding certain type of information from the citizen. But since both the citizenry and the press are vigilant, it is hard to conceive the possibility of the executive riding roughshod over the Congress as it did climatically during the time of Nixon culminating in the Watergate episode.

All this does not mean that nefarious acts are not performed by certain agencies in the US. The CIA, the Pentagon, the FBI, are all the time involved in some act of destabilising some state or the other or obtaining information about individuals, tapping telephonic conversations, etc. The activities in Chile were brought to light in the Senate hearings under the chairmanship of Sen. Frank Church.

In 1975, the Senate Committee on Intelligence was investigating the charge of murder of Patrice Lumumba of Congo by the CIA. An officer of the agency named Bronson Tweedy was interrogated since he was the chief of the African division's agency for clandestine service. The officer, of course, suffered from amnesia and his memory had to be assisted by the production of cables he had sent to Leopoldville. Another officer admitted that he was asked by the agency to murder Lumumba. There is no accountability to anyone by either the CIA or the FBI in their secrecy of operation. It is a paradox of the western administration that while demands for greater openness in government in pursuance of an open society keep on being made, clandestine activities also keep up their pace at the same time. This is not to be cited as a defence of the senseless secrecy that shrouds administrative orders in this country. The bureaucrat in India seems to take pride in making everything look confidential and he be looked up to as the custodian of these treasures, which would prove in many cases to be just junk if exposed to public scrutiny.

#### CONCLUSION

The same quantum of openness that is demanded in some countries where the legislators are by tradition bound by certain norms may not be possible in all countries, but that should not be an alibi for too much secrecy. The separation of powers that informs US or UK also applies to India and it is essential to periodically examine that how this is being respected. An administrative state does not mean an arbitrary administration and the sophistication that scientific and technological advancements have brought about should not mean that the administration has to be run purely by experts. They have to be

on tap more than ever before and their actions have to be scrutinised by the democratic processes. This would be possible not by appeals to populistic slogan mongering but by the participation of various organisations of professional men and other intermediaries in the various levels of decision-making which is done in public, excepting in the cases of national security or communal harmony. Even in such cases judicious divulgence of information is more likely to yield positive results than a total blackout. As mentioned earlier such secrecy will only breed suspicion and rumours.

Access to public information regarding actions of public men in their public role would tone up the morality in public life, especially of those in the bureaucracy where they enjoy the fruits of anonymity. If informed citizenry is the *sine qua non* of a democracy it must be told more than what the government hands out to the effete press.

It is less the content than the administration of security regulations that endangers public information. The security officer has strong incentives to over-classify. At officers' training schools, indoctrination emphasises secrecy and not disclosure. On duty, an officer soon learns that it is safer to forestall criticism by stamping a document 'secret' than by taking the risks involved in leaving off the stamp.<sup>7</sup>

If public information dries up, suspicions increase, the citizens start thinking they are made victims of propaganda, and finally they cease to be participating citizens. The ill effects of such a state of affairs are experienced belatedly, but terribly. To quote the U.S. columnist Walter Cronkite:

The people of a democracy must demand access for the press to their own institutions and records, and elected officials...for they have a critical need to know. That is particularly true today, when acts and decisions of government can affect not only the welfare of millions across the country and around the world...but the welfare and options of the future as well.

The democracy that permits its own elected or appointed officials to tell the people, in effect, that they have no right to know what goes on in public institutions, is a democracy flirting with disaster.<sup>8</sup>

<sup>&</sup>lt;sup>7</sup>Harold D. Laswek, "The Threat of the Garrison State", in Robert B. Dishman (ed.), The State of the Union, New York, 1965, p. 523.

<sup>&</sup>lt;sup>8</sup>Walter Cronkite, "Is the Free Press in America under Attack", Vital Speeches of the Day, March 15, 1979.

# Official Secrets and Freedom of Information in India

### M. Chalapathi Rau

DEMOCRACY, IT has been said, exposes its sores, while autocracy whitens its sepulchres. Whether under democracy or autocracy, a substratum of administrative secrecy is essential. This has been so in all countries and in all conditions. There is, however, a difference: under autocracy, the administration uses secretiveness and censorship as weapons and does not allow what is known as a free press, if it does allow a press. Under democracy, conditions are not ideal, unless it is an ideal democracy, but the political climate is different and the conditions of public life are liberal. Freedom of expression is relatively greater. Democracy too differs from country to country. The publication of the Pentagon Papers and the exposure of Watergate by Washington Post reporters could have been possible only in the United States.

India, following the British principle that the liberty of the journalist and the press is no greater, if no less, than that of the average citizen, based her Official Secrets Act, 1923, on the British Act of 1911, based on earlier Acts. This Act does not exhaust all the usual methods of administrative secrecy; it deals only with the more serious aspects of the vital interests of the state. It is generally recognised that highly secret information about vital interests of the state must not be allowed to be disclosed and this limitation on the right of freedom of speech and expression was recognised both by the United Nations Council on Freedom of Information and by the Council of Europe.

The Indian press has not claimed any right to publish information likely to be useful to the enemy in times of war or confidential government information likely to imperil public safety in times of emergency. It would not, however, accept the claim that any circular or note or instruction becomes a prohibited secret because it is marked 'secret' or 'confidential'. The press has claimed the right to publish confidential government information when its publication is in the public interest and the two basic limitations do not apply. It is a matter of professional honour and distinction for a newspaper to expose secret moves when public interest justifies such exposure. There could be no claim for protection on public grounds for such

papers as the Halleth Circular or the Puckle Letter of the days of the British Government. The press has also protested against the lack of clear and precise definition of 'official secrets' as far as it concerns publication.

The Press Laws Enquiry Committee held that the necessity of guarding state secrets was not confined to an emergency and that it was not practicable to define which confidential information should be published in the interest of the public and without prejudice to the interests of the state. The First Press Commission did not suggest any changes in the law because of the reasonable manner in which the Act had been administered, though it agreed with the contention that merely because a circular is marked secret or confidential, it should not attract the provisions of the Act, if its publication is in the interest of the public.

#### ADMINISTRATIVE SECRECY

This is a timid approach. The need for administrative secrecy cannot be denied, but the interests of the public must be paramount in a democracy and the U.S. approach to the problem has been more positive. The basic principle is freedom of information, not administrative secrecy, public interest and not the passing whims of a party administration. Where the government, usually belonging to a party, can be distinguished from the administration, it has a right to preserve some vital secrets, not what it considers to be secrets but what public opinion and the supreme legislature of the nation consider to be secret.

For instance, cabinet proceedings and decisions belong to a distinct category. In West Germany, in spite of the hangover of the way Hitler perverted the Weimar constitution, freedom of information has been reserved with sanctity in the constitution of the new Federal Republic. It has been so also in other continental countries. This is the modern trend in most modern countries.

In India, the operative section of the Official Secrets Act is based on Section 2 of the British Act, which is considered out of date. It was passed against the background of fears of German espionage. None of the sections of this Act was subjected to detailed discussion or scrutiny. There have been reconsiderations and moves for liberalisation on the basis of the Franks and other reports. The Indian Act stands where it was. It would be unfair to keep it as it is when the British Act is sought to be revised and when it is known that, while British statutes have been copied, British practice has not been. An open government means the public's right to information, and there is a rising demand for openness of government, which means that ministers and civil servants should accept as a matter of course that they must give full reasons for their decisions and must provide all relevant information about policies and proposals.

#### FREEDOM OF INFORMATION ACT

It is in the United States more than in any other country that openness of government is accepted at least in theory. The basis of the Freedom of Information Act, 1966, is that a democracy works best when the people have all the information that the security of the nation permits and that there should be no secrecy around decisions which can be revealed without injury to the public interest.

The citizen's view of the U.S. Government has been summarised as: The people to a far greater extent than their leaders regard government secrecy as a prime obstacle to responsiveness. But both agree that openness and honesty in officials are a prerequisite to successful contacts between the leaders and the led.

Justices Stewart and White wrote in the Pentagon Papers case: It is elementary that the successful conduct of international diplomacy and maintenance of an effective national defence require both confidentiality and secrecy. Other nations can hardly deal with this nation in an atmosphere of mutual trust unless they can be assured that their confidence will be kept.

#### PRIVACY OR PUBLIC DISCOURSE

In the words of a constitutional authority on the disorderly relationship between media and government: If we ordered it, we would have to sacrifice one of two contending values, privacy or public discourse, which are ultimately irreconcilable. It is the content that serves the interest of society as a whole.

The authors of the Freedom of Information Act clearly recognised that much foreign policy information which genuinely requires protection for a time in the public interest is not susceptible of precise definition. In enacting the law, the Congress left it to the chief executive, as the official primarily responsible for the day-to-day conduct of foreign affairs, to determine by executive order what matters are 'specifically required .... to be kept secret in the interest of the national defence or foreign policy.'

The three classification categories were defined as extending to those matters whose unauthorised disclosure 'could reasonably be expected to cause exceptionally grave damage' (top secret), 'serious damage' (secret) or 'damage to national security' (confidential). Since then there have been guidelines, declassification programmes, an effort at an effective information system and reform about policy and procedures. An effort has been made also to substitute a single definition, secret defence data, for the three existing classification categories. Congressional oversight has been always favoured.

The right of access to, inspection of, or copying of public records appears to depend largely on the provisions of a particular statute but there is no

general rule about public records and there are exceptions. There are secret or privileged matters. Mandamus is an appropriate remedy to enforce a right to inspect and copy public records. The Freedom of Information Act was passed to eliminate much of the vagueness of the old law and to strengthen its disclosure requirements. Its purpose was to provide a true federal public records statute by requiring the availability, to any member of the public, of all the executive branch records described in its requirements except those within some stated exemptions. The Act makes disclosure the general rule and permits only information specifically exempted to be withheld. Disclosure requirements are to be construed broadly, exemptions narrowly.

#### CENSORSHIP

There were earlier cases of censorship, passive or active. Alexander the Great invented postal censorship for his troops in the fourth century B.C. By his present name the censor dates back to ancient Rome. The two-men office of censorship was created in 443 B.C., entrusted with the responsibility of presiding over the census, involving not only the registration of citizens but an estimate of the duties each individual owed to the state. The scope of the office increased considerably in course of time, the censors determined the composition of the Roman Senate and propounded the moral code by which the population should abide. In Europe the idea of censorship was firmly established by the end of the Middle Ages. In the English-speaking world the first resounding blow against censorship was struck by Milton in his Areopagitica. The United States had her bill of rights only after the American Revolution. In the two world wars, the democratic world had to accept censorship. To the hangover of the two world wars, India had to add the imposition of foreign autocratic rule.

After independence, India had to fight some defensive wars, and the Defence of India Rules were at work. After the Chinese attack of 1962 and the failures of the Indian military machine, the Henderson Brooke report was kept a great secret, and in spite of a trickle of military memoirs, the failures have not been sufficiently discussed. Censorship laws, while obviously meant for protection of military secrets, have a way of slipping over into the field of opinion. 'Information of value to the enemy' is an elastic phrase. A democracy may need more criticism in a time of war than in normal times. The 'shell scandal' in the World War I, thanks to the enterprise of war correspondents like Col. Repington, saved England from near defeat. Even military secrets can be predicted by voluntary agreement more than by censorship laws. But voluntary censorship also may be unworkable. Public relations and propaganda may help, but a way out is a kind of mutuality between the government and the press.

The emergency was a great strain not only on freedom of the press but on the relations between the government and the press. Large areas of the press were needlessly suspect and treated as hostile. The cooperation of only the flattering and servile part of the press was sought. To the vagaries of censorship were added the vagaries of ministerial and departmental leadership. The remedies against this kind of situation are under the consideration of the Second Press Commission.

Without a war or an emergency, the conflict between the administration and public interest, or in its most vociferous form, the press, does not cease to exist. But it need not be a constant war, if the two sides understand their respective roles in a democratic set-up. The public official does not share, like the press, intimate experience of the public's mood. The press is publicity and lives in the now hackneyed phrase by disclosures. It is not necessary for it to share the government's responsibilities in a narrow sense; it has its own responsibilities to the public. The public official has to work within a carefully marked preserve; he spurns or should spurn publicity. The same aim of good government and the differences in technique produces conflicts, but these are not rival but complementary processes.

It is necessary for the administration to understand and accept that, apart from freedom of speech and expression, a free press is a prerequisite in a democratic set-up. Government is by debate. The administration has to be carried on in the full glare of publicity. The bureaucracy can afford and is expected to be responsive to criticism. The public official must be in the mood to understand the needs of democracy, the need for information, the need for public discussion, the need for the searchlight of publicity. In these days when governments seem to derive support for their arbitrariness direct from the people, they cannot object to the press deriving support from the same source and performing its functions without regard for the feelings of the rules. The press may not be what it should be, but till it undergoes transformation, it cannot abdicate its functions. The present unsatisfactory state of public relations in this country has not helped to lessen the irritability of government or the peevishness of some sections of the press. As a part of the administration, government information services can be more effective in case they understand the role of the press, which includes access to alternative sources of information. It is possible to check and recheck information from parallel sources. The need is for more and more information. Few press conferences unfortunately serve this purpose. The importance of communicativeness lies not in submitting to unnecessary or unwholesome prodding but in accepting the democratic need for correct information.

The right of fair comment has not been sufficiently understood by the public official and limits to it have not been understood by the press. The public official is entitled to fair play but not more than that. In Kelly vs Sherlock (1866), it was declared:

A clergyman with his flock, an admiral with his fleet, a general with his army and a judge with his jury are all subjects of public discussion.

Whoever fills public position renders himself open thereto. He must accept it as a necessary, though unpleasant, appendage to his office.

Lord Chief Justice Cockburn, in an earlier judgement in the case of Seymour V. Butterworth (1962), had said:

Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon publicmen, which they knew from the bottom of their hearts were undeserved and unjust; yet they must bear them and submit to be misunderstood for a time because all knew that this criticism of the press was the best certainty for the proper discharge of public duties.

India cannot lag behind other democratic countries. This is no time to think of official secrets, ill-defined and arbitrarily enforced. It is time to think of a positive approach according to needs of freedom of information and accept the concept of open government with access for the public and the press to all kinds of information, including files, records and other documents.

## Open Government

No statute or simple set of decisions will alter generations of received tradition. The new tradition of open government will emerge only through the practice of open government itself. The adjustment of the political sub-culture of the Public Service will inevitably be gradual. The very questioning of every example of secrecy is the essential beginning of such a process of change. The cumulative experience of ministers accepting the irrelevance of traditional concepts of responsibility; the exercise by public servants of whatever rights to freedom of speech may be recognised; the continual pressure parliamentary review of official secrecy; the use that may be made of whatever rights of access to information that may be created; the cumulative impact of the release of information which has traditionally been withheld; the effect on the public service of more rigid procedural requirements for classification—it is through processes such as these that a new tradition of open government will emerge.

—J.J. SPIGELMAN,
Secrecy: Political and Censorship in Australia,

## Secrecy in Government in India

#### Shriram Maheshwari

LL GOVERNMENTS have been practising studied concealment of information from the people, although the degree, extent and nature of such reticence would necessarily vary both synchronically and diachronically. Yet it is only recently that a demand for openness in the system of governance has been made. What is more, this agitation has acquired an almost international dimension, sweeping across all the democratic countries of the world. The Vietnamese 'escalation' and the various startling disclosures about it created a valid distrust of the government which was only reinforced by the exposure of various scandals involving personalities holding or wielding political power. The debate, understandably, started in the West, and India could not remain completely untouched. But India has had its own reasons for feeling concerned over secrecy in government. The country knows too well—and too bitterly—that only recently the political executive of the land was indulging in the most reprehensible behaviour, all this rendered possible by its habit of not letting the people know about its doings. The Shah Commission of Inquiry (1977-78) has rightly cautioned:

It has been established that more the effort at secrecy the greater the chances of abuse of authority by the functionaries.<sup>1</sup>

#### HISTORY OF SECRECY IN INDIA

Secrecy by Persuasion

Secrecy in Indian Government has indeed a long history—longer than in many other countries. As early as August 30, 1843 the Central Government in India issued a notification asking its personnel not to communicate to the outside world any paper or information in their possession. What was happening at the time was that some civil servants were supplying information on matters relating to government to the press, which had begun

<sup>&</sup>lt;sup>1</sup>Report of the Shah Commission of Inquiry, Third and Final Report, New Delhi, Controller of Publications, Government of India, 1978, p. 231.

emerging in India around this time—a practice causing occasional embarrassment to the Government. It was precisely this indulgence which was sought to be curbed by this notification, which read:

Some misconception appearing to exist with respect to the power which officers of both services (i.e., civil and military) have over the documents and papers which come into their possession officially, the Governor General in Council deems it expedient to notify that such documents and papers are in no case to be made public, or communicated to individuals, without the previous consent of the government to which alone they belong.<sup>2</sup>

Four years later, the Government of India felt compelled to reissue the earlier notification as the practice of purveying governmental information to the press and to others had not only not subsided but had in the meantime become more widespread. Some civil servants were even closely connected with the press in India.

In July 1875 the Central Government laid down detailed instructions in a bid to regulate the contemporary administrative behaviour in relation to the emerging press in India.<sup>3</sup>

Under these rules, no public functionary was permitted, without the previous sanction in writing of the government under which he immediately served, to become the proprietor, either in whole or in part, of any newspaper or periodical. It was laid down that such sanction was to be given in the case of newspapers or publications mainly devoted to the discussion of topics not of a political character, but such, for instance, as art, science, or literature. The sanction, moreover, was liable to be withdrawn at the discretion of the government.

Secondly, public personnel were not absolutely prohibited from contributing to the press; but the government wanted them to confine themselves within the limits of temperate and reasonable discussion. They, moreover, were prohibited from making public, without the previous sanction of the government, any documents, papers, or information of which they might have become possessed in their official capacity.

Thirdly, it was the government that decided, that in case of doubt, whether any engagement of civil servants with the press was consistent with the discharge of their duties to their employer.

These orders were widely circulated in 1875, but the leakage of happening within the bureaucracy did not completely stop. This indeed became a cause of concern for the government. As the business that began to pass through the

<sup>&</sup>lt;sup>2</sup>Government of India, Home Department, Public Proceedings, August 1884, Nos. 213-220.

<sup>&</sup>lt;sup>3</sup>Government of India, Home Department, Public Proceedings, August 1884, Nos. D. 213-220.

public offices became more important subsequently the government felt compelled in December 1878

to remind all officers of the government that information received by them in their official capacity, whether from official sources or otherwise, which is not from its nature obviously intended to be made public, cannot be treated as if it were at their personal disposal.<sup>4</sup>

Yet the new resolution did not depart from the basic pattern of the earlier notifications. The Resolution of 1878 did not entirely prohibit the disclosure, without special authority, of any information received officially. The government still preferred to trust the discretion and intelligence of the public functionaries holding places of trust.

But His Excellency would impress upon all officers the serious responsibility involved in the exercise of this discretion. Whenever there is any room for doubt as to the right course to pursue, the orders of superior authority should be obtained before information regarding the public affairs is communicated to any one not officially entitled to receive it.<sup>5</sup>

There was yet another change effected in the seventies. For civil servants there was introduced a special clause in their covenants binding them not to divulge official secrets.<sup>6</sup>

So long, secrecy in government was an internal affair of the government of India. In 1884 the Secretary of State for India<sup>7</sup> took up the case for secrecy, and wrote to India to initiate appropriate action in this direction. He enclosed a copy of the Treasury Minute of 13 March 1884 regarding the 'premature publication of official documents' and wanted India to adopt similar rules. The Treasury Minute reminded that

the communications against which these cautions are directed are not confined to matter still under discussion, but include also the unauthorised disclosure of matter finally decided on, but as to which the manner and

<sup>4</sup>Government of India, Home Department, Public Proceedings, January 1879, Nos. 95-96.

<sup>5</sup>Government of India, Home Department, Public Proceedings, January 1879, Nos. 95-96.

BIbid.

In Britain the press had by this time emerged as the fourth estate and there were some civil servants who were in the habit of communicating governmental information to the press. To check this practice the Treasury issued a circular in June 1873 warning that 'such breaches of official confidence are offences of the very gravest character which a public officer can commit' and cautioned that those who indulged in such practices were to be visited with extreme penalty (Government of India, Home Department, Public Proceedings, August 1884, No. 214).

the time of publication may be not less important than the matter itself. An irregularity of this latter kind would be the unauthorised communications to the public press of an official document presented, or about to be presented to Parliament, but not yet actually circulated.<sup>8</sup>

The government fell in line with the Secretary of State for India's views, and on 16 August 1884 issued a circular to this effect.

To sum up, the existing arrangements prohibited making public, without the previous sanction of government, of any documents, papers or information acquired in an official capacity. Any information received in an official capacity, whether from official sources or *otherwise*, not from its nature obviously intended to be made public, could not be treated as if at the personal disposal of the recipient. Furthermore, public personnel were charged to use discretion and intelligence in disclosing information received officially, and, in cases of doubt, to apply to the higher authority.

The weaknesses of these orders and the official circular of 1884 began to be realised in the next few years. These rules applied to the formal direct and avowed communication to the press and public official information. None of these orders, for instance, prohibited "the mischief of unguarded oral discussion of pending questions of importance, in the course of which items of information not designed for publication are allowed to get out." This had to be plugged, and this was done through a resolution issued on 3 June 1885. This Resolution is important for two reasons. First, it consolidated all the earlier orders and circulars on the subject and thus became a document which was at once most comprehensive as well as authentic on secrecy in government. Secondly, it was itself marked 'confidential', and was specially forbidden publication in the gazette. This sets it apart from the earlier orders which were all published in the gazette.

The introduction in 1853 of telegraphic communication in India had the effect of shattering the country's isolation. Hitherto, the newspapers published in India were neither numerous nor widely circulated. Now, every statement, however inaccurate or incomplete, could be reported from one end of India to the other and from India to Europe in the course of a few hours. Journalists as a class are always interested in scraps of official gossip about men and matters under discussion in the bureaucracy, for all these make juicy stories for the papers. In India, moreover, public administration was the only institution capable of providing the press with the daily pabulum requisite for the nourishment of its enterprise and maintenance of its character. The journalistic pressure on the government was thus immense, which, in the latter's eyes, needed to be regulated. This it sought to do by the Resolution

<sup>&</sup>lt;sup>8</sup>Government of India, Home Department, Public Proceedings, August 1884, No. 214.

<sup>&</sup>lt;sup>9</sup>Government of India, Home Department, Public Proceedings, June 1885, No. 162.

of 1885. The Resolution said:

No officer of Government not specially authorised in that behalf, is at liberty to communicate to the press, either directly or indirectly, information of which he may become possessed in the course of his official duty. A similar professional reticence should be exercised by all officers of Government in their private and unofficial intercourse with non-official persons, and even with officers of Government belonging to other Departments.... When an officer has in the course of his duty become possessed of special information not yet made public, he should always be strictly on his guard against the temptation of divulging it, even to other servants of Government, when these are not officially entitled to his confidence.... Officers of Government are bound to be as reserved in respect to all matters that may come within their cognizance during the discharge of their public duties as lawyers, bankers or other professional men in regard to the affairs of their clients.<sup>10</sup>

While promoting secrecy, the government was also in a way alive to its responsibility for flow of what it considered as legitimate information to outsiders, especially to the press. It made departmental arrangements for communicating to the press such information as might unobjectionably be given. The government had appointed in 1877 a press commissioner to liaison with the press and through whom official papers or information of value were given. Lethbridge was the first press commissioner in India.

#### SECRECY BY STATUTE

It must also be noted that hitherto the disclosure of the confidential information of government to unauthorised persons was punishable under the disciplinary rules, but it was not a penal offence as such. It attracted penal punishment since 1889 when the Indian Official Secrets Act was passed.

Official Secrets Act, 1889

Britain passed its first Official Secrets Act in 1889, and a unique feature of this statute was that it was applicable to 'any part of Her Majesty's dominions' including India. This flowed from the overriding British belief that secrets were imperial in nature and thus the statute enforcing it must be applicable to the empire. Section 5 of the English Official Secrets Act, however, provided:

If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to Her

<sup>&</sup>lt;sup>10</sup>Government of India, Home Department (Public), Resolution No. 22A, dated 3 June 1885.

Majesty the Queen to be of the like effect as those contained in this Act, Her Majesty may, by Order in Council, suspend the operation within such British possession of this Act, or of any part thereof, so long as such law continues in force there, and no longer, and such order shall have effect as if it were enacted in this Act.

In other words, the (British) Official Secrets Act, 1889 gave an option to India: 'You take this Act, or you frame a similar Act'. The English statute was already in force in India, but it was thought desirable to place it also on the Indian statute book in order to give it greater publicity and, secondly, —even more importantly—to bring its provisions into complete harmony with India's own system of jurisprudence and administration. In other words, the English statute was re-enacted for India with such adaptations of its language and penalties as the nomenclature of the Indian statute book required.

The Indian Official Secrets Act was thus passed in 1889. It was a brief one consisting of only five sections. But it covered a much wider area than the Resolution of 1885, and was directed against espionage as well as against any person to whom an official information 'ought not, in the interest of the state, to be communicated at that time', its overriding objective being 'to prevent the disclosure of official documents and information'. An act of espionage was punishable with transportation for life or for any term not less than five years or with imprisonment for a term upto two years. Other disclosures were made punishable with imprisonment for a term upto one year, or with fine, or with both. The offences covered by it were: (1) the wrongful obtaining of information in regard to any matter of state importance, and (2) the wrongful communication of such information.

The Indian Official Secrets Act, 1889 was amended in 1904, and as a result, it became a devastatingly severe piece of legislation. Indeed, the amendment was so harsh that it was described as an attempt to 'Russionize the Indian administration'. In the place of the provision that a person, who entered an office for the purpose of wrongfully obtaining information, was liable to be punished under the Act, it was enacted that whoever, 'without lawful authority or permission (the proof whereof shall be upon him)', went to an office, committed an offence under the Act. Secondly, the amendment made all offences under the Act cognisable and non-bailable. The draconian nature of the amendment was thus plain. This was the time when India was touching new levels of political awakening and the emerging 'seditiousness' in the country provided the justification in the eyes of Lord Curzon to think of firmer measures for official security. Around this time, upholding of secrecy in official work was incorporated in the Government Servants Conduct Rules as well. Rule 17 said:

A government servant may not, unless generally empowered by the local government in this behalf, communicate directly or indirectly to

government servants belonging to other departments, or to non-official persons, or the press, any document or information which has come into his possession in the course of his public duties, or has been prepared or collected by him in the course of those duties, whether from official sources or otherwise

## Official Secrets Act. 1923

In 1911 Britain replaced its Official Secrets Act, 1889 by the Official Secrets Act of 1911. As with its predecessor, the Act of 1911 was automatically applicable to India unless India enacted a similar legislation for itself. This was a period of political uncertainty, even expectancy for India, and it was felt that this country stood on the threshold of a new political career. The Government of India, therefore, decided not to follow on the footsteps of Britain immediately but to wait till such time as the political picture became clearer. The Government of India Act, 1919 laid down the new framework of governance for the country and it was only after this constitution was put into operation that the task of updating the arrangements regarding official secrecy was taken in hand. The Official Secrets Act. 1923 assimilated the relevant law in India to the law in Britain.

Until the passage of the 1923 Act, the law relating to secrecy in India, it may be recalled, was contained in the Official Secrets Act 1889, as amended by the Act of 1904 as well as in the Official Secrets Act, 1911 of Britain. This, to be sure, was an inconvenient arrangement and pointed the need for consolidation. The inconvenience was further accentuated when the British Act of 1911 was amended by the Official Secrets Act of 1920—primarily to incorporate the experience gained during the First World War.

The Official Secrets Bill, 1923 was submitted to a select committee of the (Central) Legislative Assembly which reported back in February 1923. The Bill was discussed in the Assembly on 14 and 24 February 1923 and was passed.

The Official Secrets Act, 1923 makes provisions against two sets of events. It is, first, directed against espionage and in this respect has left nothing to chance. The provisions covering espionage are made extremely favourable to the state, and an individual can be punished even on faint evidence. For instance, the Act says that it shall not be necessary to show that the accused person was guilty of any particular act prejudicial to the safety or interests of the state; he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appeared that his purpose was prejudicial to the safety or interests of the state. What is more, the Act says that a person may be presumed to have been in communication with a foreign agent if he has, either within or without (India), visited the address of a foreign agent or either within or without India, the name or address of, or any other information regarding, a foreign agent has been found in his possession.

The present paper does not concern itself very much with this provision. The second set of events covered by the Act relates to communication of official information to outsiders. The Act makes it a penal offence for any person holding office under the government wilfully to communicate any official information to any person, other than a person to whom he is authorised to communicate it. What is more, it is equally an offence for any person to receive such information. In other words, the statute sets out to punish both the 'thief' and the 'receiver of the stolen goods'! This is contained in section 5 of the Official Secrets Act, 1923, which is an exact replica of section 2 of the British Official Secrets Act.

Section 5 of the Official Secrets Act, 1923 is a catch all, and there is hardly anything which can escape its staggering provisions. It has been said that over 2,000 differently worded charges can be framed under it! Secondly, this section covers all that happens within the government; all information which a civil servant happens to learn in the course of his duty is official, and is thus covered under it. This section leaves nothing, and nothing escapes it. Thirdly, the Act makes a mere receipt of official information an offence. The fact that the information might have been communicated to a person contrary to his desire is irrelevant and does not immunise him even in the least! Fourthly, section 5 relates not only to a civil servant but to other persons also. It categorises four situations in which other persons may also be caught:

- 1. Government contractors and their employees. The information that they learn in their capacity is 'official' for purposes of this section of the Act.
- 2. Any person to whom official information is entrusted in confidence by a civil servant.
- 3. Any person in possession of official information which has been made or obtained in contravention of the Official Secrets Act.
- 4. Any person coming into possession, by whatever means, of a secret official code word or pass word, or of information about a defence establishment or other prohibited place.

Though palimpsest of the British statute, the Indian Official Secrets Act, 1923 is much more severe in its application, in the sense that while in Britain only the Attorney General is empowered to initiate a prosecution for violation of the Act, in India this power vests with the executive. Nor was the Act to remain in disuse for long. Soon after it was passed there was a case of a civil servant communicating to unauthorised private persons on matters coming to his cognisance in his official capacity and action was taken against him.<sup>11</sup>

<sup>&</sup>lt;sup>11</sup>Government of India, Home Department (Public), File 426 of 1923.

The catchment area of the Act is thus menacingly stupendous, capable as it is of apparently unlimited expansion. Hari Singh Gour rightly pleaded when he spoke in the Legislative Assembly:

There is another fact, Sir, upon which I invite the attention of the Government relating to civil offences. Your provisions are so wide that you will have no difficulty whatever in running in any body who peeps into an office for the purpose of making some, it may be entirely innocent, enquiry as to when there is going to be the next meeting of the Assembly, or whether a certain report on the census of India has come out and what is the population of India recorded in that period. I hope, Sir, that you will work the civil side of it in a spirit of charity and that you will not use these provisions in a manner calculated to abridge and thwart popular liberties.<sup>12</sup>

Secrecy having acquired sanctity from the statute of 1889 there was soon taken up an administrative exercise to dress it up with elaborate details. 'Memorandum of Instructions regarding the Treatment of Secret and Confidential Papers' issued on 11 July 1917 points out:

The...instructions (in respect of not divulging official information) apply generally to all documents and information in the possession of Government. Documents (including letters or other communications, official or demi-official, maps, books, pamphlets, etc.) which require additional precautions to prevent the disclosure of their contents, may be classed and marked as 'secret' or 'confidential', and should then be treated in the manner explained in the two following paragraphs.

The contents of papers marked 'confidential'...should be disclosed only to authorised persons or in the interests of the public service. They should not pass in the ordinary course through an office, but be dealt with only by the head of the office, and if necessary, certain trustworthy assistants, who should be specially authorised, for that purpose. If not passed by hand from one authorised person to another they should be sent in a sealed cover, or, as the practice is in some secretariat offices, in boxes provided with special locks. They should not be brought into ordinary proceedings, but should be separately recorded, and kept in the custody of an officer who is authorised to deal with them. If printed, the spare copies and the proceedings volumes should be treated with the same attention as the originals. As few copies of confidential papers as possible should be printed and a register should be kept of these showing how each copy has been disposed of.

<sup>&</sup>lt;sup>12</sup>The Legislative Assembly Debates, Vol. III, Part IV, 21 February 1923 to 14 March 1923, p. 2784.

Papers marked 'secret' are intended only for the personal information of the Government or individual to whom they are issued and of those officers whose duties they affect. The officer to whom they are addressed is personally responsible that they are kept in safe custody and that their contents are disclosed to the officers mentioned above and to those only. They should be kept in the personal custody of the officer to whom they are issued, except in the case of Government secretariats, in which special arrangements may be made for their safe custody. When not in actual use they should be kept securely locked up in a receptacle of which the key or keys are not accessible to any body except the officer responsible for them, and when in use care should be taken that access to them is not obtained by any unauthorized persons. A list of such papers should be kept by the officer responsible for them (or in the case of government secretariats under his orders) and, when relieved in his appointment, he will hand over both the list and the papers to his successor from whom a receipt or a charge certificate be taken.

When sent by post confidential or secret papers should be enclosed in double covers of which the inner one should be marked 'confidential' or 'secret' and superscribed with only the name of the officer by whom it is to be opened. The outer cover should bear the usual official address. Letters or packets containing confidential or secret papers sent by post should invariably be registered, and those containing secret papers should also be sent 'acknowledgement due.<sup>13</sup>

The foregoing excerpt, undoubtedly long and focussing on the mechanics of secrecy management, should enable a reader to peep into the minds of those charged with the responsibility of securing compliance with the Official Secrets Act. The detailed and copious nature of the instructions points out the gradual transformation of secrecy into a kind of 'secretism' in official India. No less impressive was secrecy's progeny; it includes 'top secret', 'secret', 'confidential', and 'for official use only', each having its own elaborate rituals.

All this could be understood if one was aware of the contemporary ecology of Indian public administration. The nationalist movement was striking deeper roots in the country and there were also the extremist and terrorist forces at work. The colonial administration was naturally too anxious not only to keep itself insulated from the people at large but also to instal and maintain a sprawling network of checks and counter checks within the administrative system too. The then ecology induced the rulers to view utmost secrecy as but an integral part of colonial survival.

<sup>&</sup>lt;sup>18</sup>Government of India, Home Department, Public-A, Proceedings, July 1917, Nos. 206-207, p. 24.

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A colonial government had thus reasons to be afraid of the people and deny them access to official information. Indeed, maximum secrecy in the performance of its operations is among the attributes, no less than prerequisites, of colonialism. It was, therefore, hoped that the theory and practice of secrecy would undergo a change with the ringing out of the old order and the ringing in of independence. This, regrettably, has not happened.

It is over thirty years since India acquired statehood but the country has preferred to continue the Official Secrets Act of 1923 on the statute book making it applicable to both the Central and the State Governments. There were, to be sure, some amendments, primarily to make terminological changes necessary to bring it in accord with the terminology of the Constitution but its basic structure and spirit remain intact.

The Official Secrets Act, 1923 was last amended in 1967 primarily "to make most of the offences punishable with greater sentences of imprisonment and make most of the offences... cognisable offences" The Minister of State in the Ministry of Home Affairs elaborated:

I will only remind him (reference is to a Member of Parliament) of the case of Amir Hussain who was prosecuted under this Act in 1963 for passing on some information—he was a Pak national—to Pakistan. When he was prosecuted under this Act, since under the provisions of this Act it was bailable, he was released on bail. He jumped the bail, crossed over to Pakistan and we lost that case completely, because he was not traceable after that. I give this case only to illustrate the necessity why the provisions of this clause must be made non-bailable so that we do not take the risk in the matter of agents of foreign countries or enemies of India and allow them to escape the clutches of law like this. 15

The Bill was passed in one sitting not taking even full two hours. While parliament was vividly alive to the dangers of spying it showed no awareness, much less understanding, of the wider implications involved in keeping governmental operations under a thick cloak of secrecy unwittingly, Parliament opted for a role destined to keep it poorly informed and therefore weak in its relationship with the executive.

The Official Secrets Act has thus kept the people in the dark about what has been happening within the government. It was the catch all provisions of this statute which encouraged the political leadership to pursue courses of action highly detrimental to public morality. The country's leadership could commit with impunity all kinds of wrong, and the device that came handy was to keep

<sup>&</sup>lt;sup>14</sup>Lok Sabha Debates, Fourth Series, Vol. VIII, No. 62, August 12, 1967, Col. 19283.
<sup>15</sup>Ibid., col. 19299.

the affairs secret from the outside world. Since the mid-sixties, particularly since the early seventies, there began to take place 'scandals', but these were prevented from coming to full light by concealing information about them from the people. If the government were more open, the scandals would not have been possible, and the nightmare of the internal emergency would have perhaps been avoided.

It was against such a setting that the election of 1977 was fought.

The Janata Party made a special mention of promoting 'openness' in government in its manifesto of 1977.16 By way of fulfilling this commitment. the then Home Minister, Charan Singh, constituted in 1977 a working group comprising officials from the Cabinet Secretariat, the Ministry of Home Affairs and the Ministries of Finance and Defence to find out if the Official Secrets Act, framed in 1923, could be modified so as to enable greater dissemination of information to the public. The working group laboured for months to reiterate the soundness of retaining without change or abridgement the statute of 1923. It argued that there was nothing in the Official Secrets Act, 1923 which stood in the way of flow of necessary information to the public. The very composition of the working group ordained the kind of verdict which ultimately emanated from it. Secrecy is a well-known device which bureaucracy presses into service to strengthen its power position and to minimise criticism of its action. Bureaucracy revels in secrecy. The 'no change' recommendation made by the working group serves only to confirm that ancient truth.<sup>17</sup> Indeed, any other kind of recommendation would have been a surprise.

<sup>16</sup>The manifesto said: "The Janata Party promises an open government in a free society and will not misuse the intelligence services and governmental authority for personal and partisan ends. It will open and sustain a dialogue with the people at all levels and on all issues." [Shakdher, S.L. (ed.), *The Sixth General Election to Lok Sabha*, New Delhi, Lok Sabha Secretariat, 1977, pp. 44-5].

<sup>17</sup>It may be interesting to note the views of Max Weber (1864-1920) on secrecy. He observes: "Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of 'secret sessions'; in so far as it can, it hides its knowledge and action from criticism. The treasury officials of the Persian Shah have made a secret doctrine of their budgetary art and even use secret script. The official statistics of Prussia, in general, make public only what cannot do any harm to the intentions of the power-wielding bureaucracy. The tendency towards secrecy in certain administrative fields follows their 1 material nature; everywhere that the power interests of the domination structure towards the outside are at stake, whether it is an economic competitor of a private enterprise, or a foreign, potentially hostile polity, we find secrecy. The pure interest of the bureaucracy in power, however, is efficacious far beyond those areas where purely functional interests make for secrecy. The concept of the 'official secret' is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude, which cannot be substantially justified beyond these specifically qualified areas. In facing a parliament, the bureaucracy, out of a sure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups. The so-called right of

(Continued on next page)

Yet, India was expecting some loosening of secrecy in government, largely because of the 1977 Janata pledge and partly also because of the fact that wind everywhere was blowing in favour of openness in government. On 30 August, 1978 Jyotirmoy Bosu stood up in the Lok Sabha to ask:

## Will the Minister of Home Affairs be pleased to state:

- (a) Whether his Ministry is aware of the fact that the British Official Secrets Act, which we follow here, is being amended allowing a right to the people to having access to all official documents other than the highly sensitive genuine ones dealing with the national security on the lines it is in existence in the Scandinavian countries;
- (b) even after Independence what is the reason for India to follow the outdated British pattern Act;
- (c) whether the Ministry would bring an Act to guarantee access to all official documents other than the highly sensitve genuine ones dealing with national security;
- (d) if so, details there of; and
- (e) if not, reason there of.

The question was handled by the Minister of State in the Ministry of Home Affairs who observed:

- (a) The Government have seen press reports to the effect that the government of United Kingdom have brought out a White Paper indicating the likelihood of amendments to their Official Secrets Act. The exact scope of the likely amendments is not known.
- (b) The Official Secrets Act, 1923 has been amended from time to time to meet our requirements.
- (c) to (e) The provisions of the Official Secrets Act 1923 are designed primarily to safeguard national security and not to prohibit legitimate access to official documents and, therefore, no legislation to guarantee access to official documents, other than those dealing with national security, is considered necessary.<sup>18</sup>

The country is thus back to 1923—to 'square one'—and is content to regulate its communication system with 'we, the people of India' along the

## (Continued from previous page)

parliamentary investigation is one of the means by which parliament seeks such knowledge. Bureaucracy naturally welcomes a poorly informed and hence a powerless parliament at least in so far as ignorance somehow agrees with the bureaucracy's interests". [Gerth, H.H. and Mills, C. Wright (Trans.), From Max Weber: Essays in Sociology, London, Routledge and Kegan Paul, 1948, pp. 233-4.]

18Lok Sabha Debates, Sixth Series, Vol. XVIII, No. 32, 30 August 1978, Cols. 294-5.

network of the colonial Official Secrets Act of 1923.

#### CRITIQUE OF SECRECY REGULATIONS IN INDIA

Today, blanket secrecy pervades every nook and cranny of public administration in India, and there is, moreover, an apparent mindlessness in the manner of its application. The several reports on administrative and social issues continue to be treated as confidential long after they are submitted and thus are not made available to the citizen. This only prevents a public debate on the system of public administration appropriate for the country.

One also notices a marked degree of selectivity, or an absence of uniformity, in the application of the Official Secrets Act, and this in its turn defeats the principle of equity, a true hallmark of administrative ethics. Civil servants are occasionally seen in practice to bend the law and adopt a somewhat flexible attitude, the sharing of official information generally depending upon the personal equation between the civil servant and the recipient. Besides, it is rather widely believed that the Official Secrets Act is made to lie low particularly when western scholars approach for information. 19 Also it is alleged that information which has economic or commercial value is often leaked out to the more unscrupulous businessmen. thanks to the 'carrots' which they are in a position to dangle before the civil servants. Even otherwise, the phenomenon of missing files in government offices is none too unconspicuous, and this only indicates a general lack of professional seriousness on the part of the bureaucracy to observe the law. These apart, some civil servants apparently violate the secrecy regulations by surreptiously having an extra copy made of relevant official papers with which they deal, and keeping it with them; this official information they later utilise for writing articles and books.

The present paper does not purport to suggest a complete abolition of the Official Secrets Act. So long as national sovereignties exist and national flags fly, a measure of secrecy in government must be considered to be legitimate. Besides, information on matters constituting what is called privacy and personal life of citizens must not be publicly paraded or even shared with other collateral agencies. In short, both national sovereignty and civilisation point to the continued need for a measure of secrecy in government. Matters relating to national security and defence, internal law and order,

<sup>19</sup>See, for instance, the following observation made by Giria Kumar, "Paradoxically enough, Phillips Talbot, the present (i.e., in 1968) American Ambassador to Greece and former Assistant Secretary to State in the Department of State was given access to secret official documents for the completion of his doctoral dissertation on India-Pakistan relations submitted to the University of Chicago several years ago. The following entry contained in a bibliographical publication may be of some interest to all of us: '2074 Talbot, Phillips, Aspects of India-Pakistan Relations, 1947-52 (Secret Research), 1955' (Stucki, Curtis W., American Doctoral Dissertations on Asia, 1963, p. 146)" (Girja Kumar, "Servitude of the Mind", The Seminar, No. 112, December 1968, p. 20).

external relations, etc., are obvious examples of areas in public administration where secrecy is warranted, at least for quite some time to come. In this category can also fall negotiations with international organisations as well as between the centre and the units in a federal set-up, economic intelligence about citizens, matters having high commercial value, etc.

In India, the Central Government should delimit the jurisdiction of secrecy, and initiate a process of de-secretisation of information in an imaginative way. The law interfering with such a course of action must change. and equally important, the mandarins' attitudes should be more positive. public-oriented and equity-based. The maxim guiding their action should be: "How much more about the government's functioning can be given to the citizens". Secondly, over-classification of papers is endemic in Indian administration and this needs to be discouraged. There is an indiscriminate use of designations such as 'top secret', 'secret', 'confidential', etc. This entails unnecessary trouble and waste of time and has its danger in tending to lessen the attention which is paid to them. It is essential that only such papers, the contents of which are in reality secret or confidential, should be so treated, and the decision in this respect should be of a fairly senior officer. Thirdly, there is at present no uniform criteria, much less scientific ones, governing the classification of official information. Nor is there any government-wide systematic review of the existing classificatory practices. Fourthly, there is presently an absence of any arrangement for de-classification of papers. No paper should be treated as secret or confidential indefinitely. Many documents in a government may be secret or confidential but only until the occurrence of some particular event or announcement. In such cases it is malicious to continue afterwards to treat them in this way. What is suggested here is that there should be periodic scrutiny of the classified documents. This scrutiny should be undertaken by fairly senior civil servants and should be at an interval of, say, five years.

Today, the Government of India is collecting an unprecedented range and volume of information relating to citizens, and to this end it has created a number of organisations such as the Intelligence Bureau, Central Bureau of Investigation, Directorate of Revenue Intelligence, Directorate of Inspection, Directorate of Enforcement (Foreign Exchange Regulation Act) etc. All these make serious and deep inroads into the privacy of citizens, which should cause concern to all right-thinking persons. It is necessary that only that information about citizens' life which is absolutely necessary gets collected, and it must remain available only to the organisation collecting it and for the purpose for which it is gathered. To avoid abuse, it may be good to create such agencies under well-defined charters of duties.

#### **EPILOGUE**

Administrative India puts the greatest weight upon keeping official infor-

mation secret. The Official Secrets Act has tended to socialise the civil service in a gravely negative frame of mind vis-a-vis the citizens, and this feature struck Paul H. Appleby in no uncertain manner. He sadly observed: "The new government has not yet got away from an arbitrary secrecy unnecessarily depriving Indian university professors and citizens generally of desirable information." Excessive secrecy has been fostered by the law no less than by the civil service attitudes themselves; secrecy signifies the civil servants' authority and authority ceases to be so if it gets shared.

Such orientations produce deep contradictions in the larger socio-political system of the land. As the latter is still relatively new and in its infancy its growth processes inevitably get retarded for want of information about the government, which means *from* the government. Open society and closed administration ill go together. Over-concealment of governmental information creates a communication gap between the governors and the governed, and its persistence beyond a point is apt to create an alienated citizenry. This puts democracy itself weak and insecure. Besides, secrecy renders the concept of administrative accountability unenforceable in an effective way and thus induces an administrative behaviour which is apt to degenerate into arbitrariness and absolutism. This is not all.

The government, today, is called upon to make policies on an ever increasing range of subjects, and many of these policies must necessarily impinge on the lives of the citizens. It may sometimes happen that the data made available to the policy-makers is of a selective nature, and even the policy-makers and their advisers may deliberately suppress certain viewpoints and favour others. Such bureaucratic habits get encouragement in an environment of secrecy; and openness in governmental work is possibly the only effective corrective to it, also raising, in the process, the quality of decision-making. Besides, openness has an educational role in as much as citizens are enabled to acquire a fuller view of the pros and cons of matters of major importance, which naturally helps in building informed public opinion, no less than goodwill for the government.

This apart, freedom of expression, a fundamental right, remains an incomplete, even empty concept without the right to information, which the Official Secrets Act sets out to negate. Of what avail is this freedom if the channels of information to the public are extremely attenuated and dried up. Rightly has the International Covenant on Civil and Political Rights declared: Everyone shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information.

## The Right to Privacy and Freedom of Information: The Search for a Balance

R.B. Jain

THE FRIGHTENING growth of postwar technology, added to the ever growing insatiable appetite of government and commerce for personal information, has brought into force the question of the existence of the right to privacy. The right to privacy is considered to be one of the most basic of human rights, yet the governmental systems all over the world have been increasingly eroding this right. Democratic systems in particular are facing a dilemma between the individual's right to be protected against interference (with his private, family or home life, or his physical or mental integrity, or his moral or intellectual freedom, or his private correspondence, written or oral, against the disclosure of embarrassing facts relating to his private life) and the public's need for access to information in order to discuss policy issues intelligently and to exercise effective control over the government. The issue generally concerns the interface between the public's asserted right to know and the individual's right to determine when and what the public shall know of him.

#### THE NATURE OF PRIVACY

In order to discuss the controversy, let us first try to understand the meaning and nature of privacy. As generally believed, privacy implies a normative element. It is the exclusive access of a person (or other legal entity) to a realm of his own. The right to privacy entitles one to exclude others from: (a) watching, (b) utilising, (c) invading (intruding upon, or in other ways affecting), his private realm. Privacy, as some scholars regard it, is a living reality, the nerve centre of a whole creative personality. The health of the organism demands its unfettered freedom, consistent with the interests of the community at large. In conditions of tyranny it cannot flourish, and the individual then becomes a grey functioning cog in a soulless society. An exclusive freedom is thus the

<sup>1</sup>See Ernst Van Der Haag, 'On Privacy' in J. Roland Pennock and John W. Chapman (eds.), *Privacy*, New York, Atherton Press, 1971, p. 149.

<sup>2</sup>Donald Madgewitch and Tony Smythe, *The Invasion of Privacy*, London, Pitman Publishers, 1974, p. 177.

most essential element for him to grow and live with dignity.

The norms invoked by the concept of privacy are diverse, not only in substance but also in the logical form; some grant immunities; some are prohibitive; some are mandatory. There may be, cultures, indeed, with no norm-invoking concept of privacy at all, where nothing is held immune from observation, and anything may be generally displayed. It might still be possible, of course, to seek out private situations where one would not be observed, but it would never be a ground of grievance either that an action was or was not open for all to see or that someone was watching. Whatever the possible diversity, some privacy claims seem to rest on something more solid than mere cultural contingency.<sup>3</sup> It is the universal realisation of the fact that there still are certain areas in which an individual can himself be free from external restraint or observation, irrespective of the cultural permissiveness that seems to be the accepted basis of the right to privacy.

#### THE NEED FOR THE RIGHT TO PRIVACY

In many countries of the world, the right to privacy has long been indirectly protected by outlawing offences such as trespass or burglary, which can scarcely be committed without violation of privacy. But the need to protect privacy per se has become more salient now. For one thing, technology has made it possible to violate privacy without trespass, and, for another, powerful communications media find it more and more profitable to violate privacy in the service of public curiosity.4 Perhaps the most important emergent factor, as has been suggested by Arnold Simmel, has been the development of new technologies that threaten privacy from ever new directions. These developments have greatly increased the possibility of observing the activities of individuals and groups, of disturbing their equanimity or internal balance, and of influencing or controlling their behaviour. Such possibilities may become realities unless effective social control mechanisms are developed. Law does provide one such mechanism but in a period of rapid social change, the heterogeneity of social norms and beliefs leaves much uncertainty and instability of behaviour in those areas of action which law does not seek to control, or fails to control.5

Technology provides the material potential for electronic spying and high speed record keeping and information retrieval; for psychological testing and psychiatric interviews; for the use of drugs and other psychological agents, as well as methods of physical deprivation, irritation, and coercion which, contrary to the victim's wishes and interests, may unveil the secrets

<sup>&</sup>lt;sup>3</sup>Stanley I. Benn, "Privacy, Freedom and Respect for Persons", in J. Ronald Pennock and John W. Chapman (eds.), op. cit., p. 3.

<sup>&</sup>lt;sup>4</sup>Ernst Voan Der Haag, op. cit., p. 130.

<sup>&</sup>lt;sup>5</sup>Arnold Simmel, "Privacy" in *International Encyclopaedia of the Social Sciences*, Vol. 12, pp. 480-86.

of his mind; and for the manipulation of groups to make people confess or turn informers. The chances that these methods will be used are vastly increased if the ideologies in particular countries are at hand to legitimise such use. Thus in circumstances when *ideologies*, political or religious, demand orthodoxy of all citizens, or when confessions of guilt or the punishment of persons, irrespective of proof of guilt, are considered justifiable on administrative or political grounds, spying and informing, forced confessions and coercive persuasion will flourish. Ideologies of religions, or political 'purity', of 'moral community' or of 'mental health', can be and have been employed to legitimise the use of psychological techniques for the manipulation of behaviour in flagrant disregard of time-honoured concepts of personal integrity.

There are, however, critics who hold dramatically an opposite views on this subject. One such critic of privacy, H.W. Arndt observes:

The cult of privacy seems specifically designed as a defence mechanism for the protection of anti-social behaviour.... The cult of privacy rests on an individualist conception of society, not merely in the innocent and beneficial sense of a society in which the welfare of individuals is concerned as the end of all social organisations, but in the more specific sense of "each for himself and the devil takes the hindmost...." An individualist of this sort sees 'the Government' where we might see 'the public interest', and this Government will appear to him often as no more than one antagonist in the battle of wits which is life—or business.<sup>8</sup>

Despite these attacks on the right to privacy, scholars have been quick to point out that it is in the respect for privacy, as much as in any other single characteristic, that a free society differs from the totalitarian state.

#### THE INFORMATION RETRIEVAL SYSTEMS AND 'PRIVACY'

In recent times many governments have felt the need for the creation of a national data centre containing detailed biographical and personal information about individuals in various walks of life in a society—ostensibly for better planning and policy purposes. Such a move has, however, been frequently opposed as an infringement on the individual's right to privacy. The resentment to the idea of a national data centre, collating all that is known about an individual from his past contacts with government agencies, is evoked by the close connection between the general principle of privacy and the respect for persons. Much has been made, of course—and no doubt

<sup>&</sup>lt;sup>6</sup>Arnold Simmel, op. cit., pp. 480-86,

<sup>7</sup>Ibid.

<sup>&</sup>lt;sup>8</sup>H.W. Arndt, "The Cult of Privacy", American Quarterly, Vol. 21, 3, September 1969, pp. 70-71.

rightly—of the dangers of computerised data banks, governmental or otherwise. The information supplied to and by them may be false; or, if true, may still put a man in a false light, by drawing attention, say, to delinquencies in his distant past that he has now lived down. And even the most conforming of citizens would have reason for dread, if officials come to regard their computers both omniscient and infallible. There is thus a real danger that information may be used to harm a man in some way. The usual arguments against wire tapping, bugging, a national data centre, and private investigators rest heavily on the contingent possibility that a tyrannical government or unscrupulous individuals might misuse them for blackmail or victimisation. The more one knows about a person, the greater the power he acquires to damage him.9

In many countries a good deal of legislative intervention has been sought as a safeguard against the abuse of information power. Yet for some objectors at least it altogether misses the point. It is not just a matter of fear to be allayed by reassurances, but of a resentment that anyone — even a thoroughly trustworthy official—should be able at times to satisfy any curiosity, without the knowledge, let alone the consent, of the subject.<sup>10</sup>

The difficult problem raised by modern technological devices for intruding upon privacy, or by information retrieval systems that tremendously enhance the efficiency of governmental record keeping, are important issues that have been dealt with extensively in literature at least in the context of developed societies. However, a common concern expressed in modern academic circles has been that while we are aware of the values of individualism, of liberty, and of the role that privacy plays in supporting them, we cannot disregard at the same the government's need for information, or indeed of the personal values that come from solidarity rather than idiosyncracy. How, in a changing society, to keep the right amount of tension and the proper balance between the claims of autonomy and those of sociability is the problem which is the concern of academics and statesmen today.

#### 'PRIVACY' Vs. 'SECRECY'

The issue of the 'right to privacy' is further complicated by the recent demand in certain societies for a more open administrative system. There is a widespread belief prevalent in many western countries that democracy would progress if the 'administration's filing cabinets were open under some sort of judicial control' and the administrative documents were made available for inspection by the ordinary members of the public. This would, it is argued, lead to a more open, democratic process of administrative decision-making

<sup>&</sup>lt;sup>9</sup>Benn, *op. cit.*, p. 6. <sup>10</sup>*Ibid.*, p. 12.

and, at the same time, serve as a sort of control mechanism on the bureaucracy's corrupt and arbitrary behaviour. Thus citizens in many countries have claimed a 'right to information' as against the government's need for administrative secrecy in certain areas. Many scholars have felt that the present balance between the two conflicting claims favours too much secrecy, and that a public right to access of administrative documents ought to be established by a specific law. To delineate the boundary between warranted and unwarranted secrecy and to enquire into the lines on which a satisfactory balance could be struck between the legitimate requirements of the citizens, science, and industry for freedom of information and the need of the government (for quite specific and justifiable reasons) to keep certain information confidential or even strictly secret has been the key problem in public administration today and which has defied a universally acceptable solution.<sup>11</sup>

The provision in certain countries that computer records holding highly personal information about citizens are to be classified as documents for purposes of public access, has raised new problems converging on the issues of 'privacy' vs. 'secrecy'. While, on the one hand, the easy availability of computer information may be regarded as a danger to personal privacy, on the other, its centralisation and difficulty of access by the average citizen makes it easier to withhold. The argument about secrecy and publicity has thus continued and is a live subject of discussion over parliamentary procedure and governmental operations.

In modern thinking, secrecy belongs to the group of phenomena which while ubiquitous in politics is considered morally objectionable or, at least, an instrument of potential misuse, such as corruption and betrayal (treason). Secrecy has traditionally been condemned by the more radical liberal and democratic thinkers, and publicity has been claimed to be essential to desirable public life. Immanuel Kant was inclined to make publicity the touchstone of one's acting morally; secrecy carried the implication of something questionable and presumably morally obnoxious. Bentham thought that parliamentary debates required publicity and was prepared to make it an absolute standard. It is thus evident from available literature that secrecy is found throughout public life, and that some types of secrecy, that is, secrecy under some circumstances, in some situations, is functional, whereas in others it is disfunctional.<sup>12</sup>

In the debates over these issues it is often overlooked that secrecy is a main behavioural aspect of an effective bureaucracy, whether governmental or private. A good many arguments on behalf of privacy are in fact meant to protect the secrecy of industrial and commercial operations. Rules and

<sup>12</sup>Carl J. Friedrich, "Secrecy Versus Privacy: Democratic Dilemma" in Pennock and Chapman (ed.), op. cit., pp. 105-6.

<sup>&</sup>lt;sup>11</sup>The extent of administrative secrecy prevailing in many developed societies has been admirably presented by Prof. Donald C. Rowat in his edited work *Administrative Secrecy in Developed Countries*, London, 1977.

regulations looking towards secrecy have played a considerable role in the development of bureaucracy. The determined effort of organisations to keep secret their important evidence in controversial and competitive situations shows that such secrecy (privacy) is functional.<sup>13</sup>

Prof. Friedrich considers privacy as a special form of secrecy. Since secrecy is endemic in all social relations, it is also there in politics. But the functionality of privacy and secrecy are dependent upon the system of which they form a part, and hence their evaluation must vary. At the same time, secrecy acts as a factor of systems influencing each other, and the destruction of privacy and enlargement of official secrecy, and indeed the entire apparatus of the secret police state, has forced democratic states to adapt to the world of totalitarian competition, to increase official secrecy, and reduce privacy by the institution of police and investigatory methods resembling those of the autocratic order. 'Thereby' argues Friedrich, "they have endangered their systemic order and hence their internal security". 14 In his opinion, making the innermost self secure is more vital to the security and survival of a constitutional order than any boundary or any secret. It is the very core of the constitutional reason of state. Insight into this need for maintaining privacy against all clamour for official secrecy is still missing in many quarters and the trend has been in the opposing direction. The functionality of officials and of private secrecy is in a delicate balance. It is difficult at the present time to assess the eventual outcome of the conflict between these two claims for secrecy. 15

## 'RIGHT TO PRIVACY' AND 'FREEDOM OF INFORMATION': THE AMERICAN EXPERIENCE

The conflict between a society's desire to protect the 'invasion of privacy' and yet grant its citizens the right to freedom of information is nowhere better illustrated than in the USA ten year campaign in the US Congress, in which representatives of the news media played a leading role culminated in 1966 in a revision of the Public Information Section of the Administrative Procedure Act, leading to the enactment of the Freedom of Information Act (FOIA), 1966. Complaints during the 1972 Moorhead hearings about bureaucratic foot-dragging in administering FOIA, largely voiced by public interest groups such as those of Ralph Nader, coupled with the widespread concern during the 1973-74 Watergate period over excessive government secrecy, resulted in the 1974 FOIA Amendment. The FOIA<sup>16</sup> is the chief federal law on openness in government. FOIA is an open records law, and provides that 'any person' has a right, enforceable in court, to access to all 'agency

<sup>13</sup>Carl J. Friedrich op. cit., p. 111.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid., pp. 119-20.

<sup>&</sup>lt;sup>165</sup> U.S.C. 552, originally passed in 1966, effective in 1967 and amended in 1974 became Public Law 93-502, 21 November 1974.

records'—generally any record in the possession of a federal agency—except to the extent the records or parts of them may be covered by one of FOIA's nine exemptions.

The law obliges the federal officials to respond, within fixed deadlines, to requests from 'any person' for government documents. Disciplinary action can be taken against the officials for any arbitrary or capricious withholdings. The FOIA thus applies to almost the entire range of federal activities and claims to have resulted in a much more open government. The new law has led to the uncovering of thousands of hitherto secret documents on historic events and the present day controversies ranging from the Rosenberg spy case to the manoeuvering behind India's 1974 atomic explosion.

About a month after the enactment of the FOIA, the US Congress also enacted the Privacy Act. The Privacy Act of 1974 is based on the Congressional findings that: (a) the maintenance of personal information systems by federal agencies directly affects an individual's privacy, (b) the proliferation of information systems, including computers, while necessary for the efficient and effective operation of the government, presents a major potential for harm to individual privacy, and (c) it is necessary and proper for the Congress to control personal information systems operated by federal agencies in order to protect the privacy of individuals identified in their systems.  $^{18}$ 

The objective of the Privacy Act of 1974 was to provide safeguards against the invasion of personal privacy by requiring federal agencies (except otherwise provided) to (a) permit an individual to ascertain what records pertaining to him are contained and used in an agency's information system, (b) permit an individual to determine that information gathered for a specific purpose is not used for other purposes without his consent, (c) maintain information systems only for necessary and lawful purposes and ensure that data is current and accurate for its intended use and that adequate safeguards prevent misuse of the information, and (d) permit exemptions when important public policy requirements for such exemptions have been demonstrated.<sup>19</sup>

The US Privacy Act rests on the principle that: (a) there must be no personal-data record keeping systems whose very existence is secret, (b) there must be a way for an individual to find out what information about him is in a record and how it is used, (c) there must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purposes without his consent, (d) there must be a way for an individual to correct or amend a record of identifiable information about himself, and (e) any organisation creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data

<sup>&</sup>lt;sup>17</sup>Public Law 93-579, 31 December 1974.

<sup>&</sup>lt;sup>18</sup>Hugh V. O'Neill, "The Privacy Act of 1974: Introduction and Overview", *The Bureaucrat*, Vol. 5, 2, July 1976, p. 135.

<sup>19</sup> Ibid., pp. 133-4.

for their intended use and must take reasonable precautions to prevent misuse.20

#### FOIA AND THE PRIVACY ACT: THE INTER-RELATIONSHIP

Although it is contended that the two Acts come in close conflict with each other and the one negates the purpose of the other, the experience in America suggests a close inter-relationship between the two. The Privacy Act governs the manner in which the federal government collects and uses certain information about individuals and grants individuals a right of access, subjects to certain exceptions, to records pertaining to them. Either the Privacy Act or FOIA or both may be used by an individual seeking access to information about himself in agency records. But the two Acts differ considerably in purpose, scope, procedures, and effects.

The general purpose of FOIA is to protect the public's right to know, while the Privacy Act is intended to give the individual better control over the gathering, dissemination, and accuracy of agency information about himself. FOIA gives a person a right of access to everything in agency records except for the nine exemptions; the Privacy Act gives the individual two principal sets of rights as to certain records that contain information about himself—rights of access and rights to exclude others from access without his consent—with each set of rights subject to its own list of exceptions. FOIA constitutes an important exception to the individual's right under the Privacy Act to exclude access by other persons to records about himself.

The two Acts also are different in scope: all agency records are under FOIA, but only the records in a 'system of records' are subject to the Privacy Act. A 'system' is defined as a group of records from which information is retrieved by the individual's name, social security number, or the like. Also, the concepts of 'records' under the two Acts are different. Under FOIA a record is a repository of information, while under the Privacy Act a record is defined, in effect, as an item of information about an individual that has been recorded.

The two Acts provide different procedures as to fees, time limits, judicial review and other matters. They also provide different sources of guidance: the Justice Department provides guidance to agencies on FOIA, while the Office of Management and Budget provides guidance on the Privacy Act, though with legal assistance from justices.

Whether information about an individual is protectable depends chiefly on exemption 6 of FOIA, discussed above. If the information is under FOIA exemption 6 and is also in a Privacy Act 'system', the Privacy Act eliminates the agency's option to make a discretionary FOIA release.

### LESSONS FROM THE AMERICAN EXPERIENCE

The American experience of the operation of the FOIA and the Privacy Act has not been all that successful. The years of foot-dragging in the supply of information has not ended, despite its extensive use made by the American business, the Washington law firms, the general public, historians, scientists and public interest groups. The members of the press found the law officer too sluggish for them. Some federal agencies, like the selective servicing system, have been found to be inventing their own excuses to duck the freedom of information law. The selective service system refused to make public even the annual report to the Congress that the streamlined freedom of information law required, thus retaining the penchant for secrecy.<sup>21</sup> If many federal agencies are dissatisfied with the way the FOIA has worked, so are many members of the public. For those who request information from the government, the problem is not so much that they cannot find what they seek, as that it seems to take the government for ever to produce it.

However, the operation of the FOIA has not, surprisingly, made any deep inroads in the operation of Privacy Act, thereby suggesting that the contradictory two could be reconciled and held in balance. The need for strengthened fair information practice safeguards is an intricate social issue involving organisations, prerogatives, personal values and attitudes, computer and communication technology, and a delicate balance between personal autonomy and a genuine need for information in both the public and private sector.<sup>22</sup>

On the other hand, the heart of the 'privacy protection issue' is the nexus between uses that organisations make of records they keep about individuals and the effects such uses can have on each of us as an ordinary individual. What many implicitly sense, and what in the final analysis may prove to be the pivotal issue, is that the records about individuals will be used to tighten the processes of society to such an extent that they will lose some of the personal autonomy they now have. Sociologists call the phenomenon 'strengthening the mechanisms of social control' but, however may be that one wishes to label it, the fact of the matter is that, recorded personal information can be, and has been, used to compel people to do things or to prevent them from doing things that they might have been better advised to do or not to do voluntarily.<sup>23</sup> This specifies the need for striking an acceptable balance between the legitimate needs of government and society for information and the individual's need to have his privacy—his 'personal autonomy'—

<sup>&</sup>lt;sup>21</sup>For a very illuminating series of articles on the operation of the FOIA see George Lardner Jr., "Freedom of Information Act: Years of Foot-Dragging Not Ended" in *The Washington Post*, 26, 27, 28, 29 July 1976.

<sup>&</sup>lt;sup>22</sup>Willis H, Ware and Carole W. Parsons, "Perspectives on Privacy: A Progress Report", *The Bureaucrat*, Vol. 5, 2, July 1976, p. 156.

<sup>&</sup>lt;sup>28</sup>Neill, op. cit., p. 143.

respected.24

The above discussion in the context of a developed democratic society may not prove to be relevant in developing countries like India, where the issue 'privacy vs. freedom of information' has not yet taken such a debatable proportion. However, developments in the Indian political system of the last five years or so do point to the fact that in the coming decade, in all likelihood, this issue will be the pre-runner of other information related issues on which a coherent and a rational public policy will be needed. The events leading to the declaration of emergency in 1975, the developments that took place during 1975-79, the efforts of the Shah and other enquiry commissions to unearth the correct information for public consumption and the personal, legal and political conflicts in which the public officials (both political and administrative) found themselves while discharging their lawful obligations have certainly highlighted the need for some legislative instrument to strike a proper balance between these two basic and seemingly conflicting propositions, especially in the context of an administrative system, which has traditionally been notorious for its conservatism and excessive secrecy.

Thus the protection of privacy requires not only a degree of consensus in the total population about the rights of the individual, who may be poor, uneducated, and of minority groups, and adequate laws to recognise these rights, but also considerable efforts by those who exercise influence and wield power, governmental or otherwise, to enforce the laws and to encourage compliance with the moral, general, social norms of respect for the individual. However, the emphasis on the right to privacy should not obscure the fact that governments and other collectivities have legitimate concern over private aspects of their members' lives. Laws establish only guidelines for the competition between the autonomy of the individual and his government; the understanding of that competition requires further study of the functions of privacy for individuals, for collectivities, and for the relationships between the two.<sup>25</sup>

In the final analysis, as Snyder contends, we must assure freedom and integrity of the flow of information in our society; for in a community which has grown so large and complex we cannot personally experience its reality; we will have to depend upon the reality inferred from the data flow to inform our decision-making. To the extent the data is complete, correct and timely, our decisions will be as correct as our collective decision-making processes will permit. To the extent that the information is incorrect, incomplete or substantially delayed, our decisions will be inadequately informed, and subject to greater error. And during the coming decades, we will have precious little margin for error.<sup>26</sup>

<sup>&</sup>lt;sup>24</sup>Neill, op. cit., p. 144.

<sup>25</sup>Simmel, op. cit., p. 486.

<sup>&</sup>lt;sup>26</sup>David P. Snyder, "Privacy: The Right to What?", *The Bureaucrat*, Vol. 5, July 1976, p. 225.

### CONCLUDING OBSERVATION

A question has been frequently asked: Is privacy outmoded, destined for the trash heap in a new 'holistic society'? The answer is a clear 'no'.

Privacy is so much a cornerstone of liberty that it pervades all our daily lives in numberless small ways, affecting human relationships at the most personal levels. It is not enough to leave it all to the legislators' or the administrators' discretion. We must all be 'whistle-blowers' or vigilants, realising what the issues are, and being prepared at all times to take up the cudgels to guard what is one's by right. We must fight the official notion that our rights are mere privileges, grudgingly given and liable to be taken away at the first sign of alarm or hysteria.<sup>27</sup>

However, the question is: whether we will continue with the tensions that mark our present society in which the power of the state is used to enlarge the sphere of privacy for the benefit of the individual while, elsewhere, at the same time, it is intruding upon that same sphere. Or are certain areas of life inherently more private than others? Or is it more important that the individual should have complete autonomy in *some* areas, regardless of what they are, than that the lines between private and public should remain for ever unchanged? These have been posed again and again and will continue to be debated by the academics and the intellectuals.

In the ultimate analysis, and in the background of its continued erosion by the governments of the day, the issue of the 'right to privacy' is no longer administrative, political, legal or cultural, but has acquired the dimension of an issue of human rights, and has to be treated from a universal perspective. A consensus on the boundary line where privacy ends and public gaze begins may have to be evolved soon if a terrible future through the technology of behavioural control as predicted by George Orwell is to be avoided.

## Privacy and Its Eclipse

Privacy is personality and its eclipse is also the eclipse of human rights.

-Mr. Justice V.R. Krishna Iyer, Judge, Supreme Court of India, in a Recent Talk in IIPA.

<sup>&</sup>lt;sup>27</sup>Madgewitch and Smythe, op. cit., p. 175.

# Open Government in the United States

### O. Glenn Stahl

LL ASPECTS of governing entail resolution of adversary relationships. A But no issue resulting from exercise of authority seems to consist almost entirely of such tensions as much as secrecy in government. The conflicts seem boundless: the public's right to know vs. the government's obligation to administer without undue interference: the eternal struggle between agents of the press vs. public officials; an individual's need for information possessed by government vs. another individual's privacy; open covenants, openly arrived at vs. the practicalities of negotiating procedure; keeping government processes open vs. the enormity of continual tapping of the computerised information explosion; a newsman's desire to protect his sources vs. an official's desire to know his accusers; the need to expose conflicts of interest vs. an official's right to a private life; the saleability of bad news over good news vs. the impossibility of publicising all actions; sensationalism vs. the whole truth; and, of course, the very sensitive strain between a public's right to know vs. protection of that public by ensuring that military or related information does not fall into the hands of a potential enemy.

Concentrating our attention on a democratic polity (for an authoritarian state makes no pretence of open government), we all know that every government based on the consent of the governed experiences the foregoing tensions every day. The United States of America is no exception. Young as it may be culturally, this oldest democratic society has probably dealt more fully, forthrightly, and continually with openness vs. secrecy than any other nation. Yet, a renewed concern with the issue has especially preoccupied Americans in the past two decades.

#### ROOTS OF OPENNESS

The foundation for openness in government goes back to the constitution established in 1787. Its roots lay in the revulsion against monarchy and absentee government inherent in the colonial situation prior to the revolution of 1776. Its expression was most directly provided in the first amendment to the constitution which forbade the legislative body, the Congress, from passing any law "abridging the freedom of speech or of the press."

James Madison, one of the constitution framers and fourth President of

the United States, said: "A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both." It was recognised early in the nation's history that even in a well-ordered democracy the instinct for official self-preservation is strong and must be tempered with a counter force. Thus the emphasis on a free press. And in the mid-twentieth century a cabinet member put the principle well when he said: "If the idea of a democracy should ever be invalidated, it will be because it came about that more and more people knew less and less that was true about more and more that was important." Still, we are reminded of the eternal dilemma by George Bernard Shaw's words: "Liberty means responsibility. That is why most men dread it."

In spite of the vision of the forefathers, openness in government did not spring full blown overnight. It grew in degree and in detail over the decades, and it depended greatly on the persistence of an aggressive press.

Sessions of legislative bodies—the Congress, state legislatures, city councils—were open to public scrutiny almost from the beginning. Judicial trials were, for the most part, conducted openly—although it is significant that juries have always deliberated in secrecy and continue to do so, with practically no objection from any source. Indeed, on occasion, committees of legislative bodies hold closed sessions (usually called 'executive sessions') when they consider matters relating to national security or to criminal investigations. It should be noted in passing that two conditions seem to characterise rationalisation for closed meetings: either (1) the need to protect the subject matter being dealt with from exploitation by enemies or suspected law breakers; or (2) the need to insure free and uninhibited discussion and deliberation by a deciding body. Both of these considerations should be borne in mind when we extend our inquiry into the third branch of government—which bears the brunt of the attention and debate over secrecy—the executive branch.

### ACCESS TO THE EXECUTIVE

Curiously, when journalists or scholars agonise over alleged secrecy in government in the United States, they almost invariably are thinking about chief executives and their principal subordinate officials. It is in this arena that argument goes on, with hardly any attention at all to dispositions towards secrecy on the part of legislators and jurists. Perhaps this merely mirrors the fact that so much of what we call government nowadays emanates from executive sources, as well as the human propensity of administrative officers, both elected and appointed, to play as many of their cards close to their chests as they can get away with.

<sup>&</sup>lt;sup>1</sup>W. Willard Wirtz, who was Secretary of Labour under Presidents Kennedy and Johnson, from 1962-69

Much of the most recent agitation against secrecy in this country stems from the shock of revelations of official misconduct during the Nixon period (1969-74). However, even the most avid supporters of open government acknowledge limitations on the ideal as far as Presidents and other executives are concerned. For example, the joint editors of a book of essays whose bias is betrayed in heavy sarcasm by its title, *None of Your Business*, observe:

There are situations in which secrecy is permissible, even desirable. Thus, a government should be able to protect certain military and diplomatic information of potential value to enemies; to safeguard the process of decision-making by protecting confidences in order to encourage frank discussions; and to assure that private information about people is not widely disseminated.<sup>2</sup>

The two major bastions used by the executive to protect such legitimate secrets are: (1) the classification of documents, that is, the varying degrees of restriction of use and access concerning reports, communications, and other papers that deal with military, diplomatic, or other affairs involving the national security; (2) the doctrine of 'executive privilege.'

The need for classification of documents is unquestioned. The debate is simply over whether it is overdone. Journalists are inclined to think that government officials are too prone to label something as having to do with national security when its connection is remote; officialdom, on the other hand, thinks that journalists often don't know what they are talking about. Whether the general public can ever determine who is most right on this issue is doubtful, although fear of 'over-classification' by executives is considerably mitigated by the practice of allowing legislative committees to peruse classified documents whenever it is necessary for the body to use them in their development of legislation or in their conduct of official inquiries. In other words, the representatives of the people do have access to these materials on occasion and can be depended on to complain if they think many of them are unnecessarily restricted.

The matter of 'executive privilege' is somewhat more elusive. This refers to the long-standing practice on the part of Presidents of the United States to withhold information specifically requested by the Congress. It is ostensibly based on the constitutional authority of the President to "take care that the laws be faithfully executed" and the general structural independence of the presidency under the American system. Between 1952 and 1974 this privilege of withholding information was asserted a total of fifty-one times, an

average of a little over two occasions per year.<sup>3</sup> Some observers consider this too much; others, and they seem to be in the majority, tend to see the matter in more perspective and view these invokings as 'comparatively rare occurrences.'

Students of the subject condone the doctrine of executive privilege on the ground of the legitimacy of secrecy in such areas as the following: (1) military and foreign affairs, which are covered by the system of classified documents and rest on specific statutory authority (although, as mentioned, on occasion even classified papers are made available to congressional committees); (2) investigatory files and litigation materials, which are amply covered by statute; and (3) advice received within the executive branch, which distinguishes action (which is available) from the processes and advice that led to the action, and which is necessary to protect the integrity and willingness to be heard of career civil servants. One modern amendment to the executive privilege concept, highlighted during the Nixon administration, is the doctrine that even a President cannot withhold information on matters in which criminal conduct is implied by already available evidence.

Journalists, in their proverbial 'fishing expeditions', notoriously ignore the idea of protecting the confidentiality of the advice process within the executive branch. If they can extract from someone down the line a few titbits about what is likely to be recommended to a department head or the President, they usually jump at the chance to reveal their findings (while never revealing their sources). Likewise, members of Congress often seek to intimidate lesser officials into giving out in advance of final decisions what is likely to occur. Obviously, such violations of the administrative process compromise the integrity of the process, handicap top executives in taking responsibility for their decisions, and slow down the entire system.

#### THE FREEDOM OF INFORMATION ACT

The most significant development relating to the secrecy issue in this country has been the Freedom of Information Act passed by Congress in 1966 and further extended in 1974. As distinguished from legislators, both individually and collectively, who have for the most part had access to practically everything they really needed from executive agencies, the average citizen or private groups have not had as easy a time to get *unpublished* information from their government. Published material, yes; the United States Government probably publishes more data and reports on a broader variety

<sup>&</sup>lt;sup>3</sup>The Presidents in office during these years were: Eisenhower, Kennedy, Johnson, and Nixon. Twenty-one of the occasions occurred under Nixon, who averaged over four per year. Data is hard to come by as to previous use of the privilege, but its use is understood to have declined until the Nixon period. Undoubtedly it was more frequently invoked before the advent of document classification before World War II.

of subjects than most of the rest of the world's governments put together. But obviously much remains unpublished. It was to meet this occasional need on the part of private citizens that the Freedom of Information Act was legislated. Previously, there had been no clear guidelines to assist a citizen seeking information and no remedies for denial of access.

The effect of the new law was:

- 1. to shift the burden from the individual to the government; that is, the onus is now on the government to justify secrecy;
- to replace a 'need to know' standard with a 'right to know'; 2.
- to require any request to be met, provided any expense of searching 3. and duplicating records is paid for;
- to establish standards for what records are open to public inspection 4 and judicial remedies for any aggrieved citizen; and
- to require federal agencies to provide the fullest possible disclosure. 5.

Prior legislation had simply authorised secrecy for 'good cause' or to protect the 'public interest,' and in 1958 had modified the longstanding official authority to regulate storage and use of records by clarifying that this did not authorise withholding them from the public.

The Freedom of Information Act covers opinions and orders within an agency; policy statements and interpretations not already published; staff manuals; and records that affect the public. Further amendments passed in 1974 speeded up and eased the process of access, requiring prompt responses; required uniform and moderate fees for locating and copying records; called for publication of indexes for administrative processing of requests; and required release of parts of documents even where some parts met the statute's standards for confidentiality.

The new law denies access only for the following categories of material:

- 1. classified documents concerning national defence and foreign policy;
- personnel and medical files, and other material concerned solely with 2. internal personnel rules and practices;
- 3. confidential business information (e.g., trade secrets, data on financial institutions, certain geologic data, etc.);
- 4. investigatory files:
- internal communications; and 5.
- information exempt under other laws. б.

The exceptions appear to be sufficient to prevent any unnecessary burdens on administrative agencies and still allow maximum access to the average citizen.

### THE PRIVACY ACT

Related to the Freedom of Information Act, although at some points requiring some reconciliation of purposes, is the Privacy Act of 1974. The main thrust of this legislation is to maximise an individual's access to records about himself but to protect the privacy of individuals from snooping by others. This law allows a person to review most files pertaining to himself; requires that these be complete, accurate, and up-to-date; allows the individual to challenge their accuracy; gives him significant control over how information concerning him is used; prescribes that information obtained for one governmental purpose (e.g., taxable income, census data, etc.) not be used for another purpose; and restricts disclosure of personal information about an individual to others except with his consent.

Files of the Central Intelligence Agency and of criminal law enforcement agencies, plus investigatory materials of all law enforcement agencies and intelligence files of the U.S. Secret Service are proscribed from any access. Access is also denied for files used solely for statistical purposes; investigatory material for federal employment, military service, contracts, and security clearances; testing or examination material used solely for employment purposes; evaluation material used in making promotions in the armed services; and, of course, classified material concerning national defence and foreign policy.

It should be noted that, while protecting the individual citizen from inappropriate use of data about himself, the Privacy Act, like the Freedom of Information Act, is clearly designed to open up government files to any individual provided they do not breach the rights of others or the security of the state.

### OPEN MEETINGS

On the heels of the foregoing legislation, a law was passed in 1976 (effective in 1977) that requires forty-seven multi-membered federal agencies to open most of their regular meetings to the public. Known as the 'Sunshine Act', this Act applies mainly to regulatory bodies like the Inter-State Commerce Commission, the Federal Trade Commission, the Federal Communications Commission, the Securities and Exchange Commission, and other agencies concerned with regulating economic behaviour. A number of these sessions had been normally open before, but the new law pinned the matter down and again put the burden on the government organisation to justify secrect meetings.

An organisation that monitors such events reports that during the first year of operation under the new Sunshine Act only 38 per cent of all meetings were 'entirely open to the public.' Attention is drawn to the term 'entirely'. It is quite likely that many sessions were *partially* open, being closed only

for such portions of time as were devoted to prescribed matters, such as personnel decisions or commercial issues that would have revealed trade secrets.

### ETHICAL CONCERNS

Closely related to matters of secrecy and openness, to say nothing of privacy, has been the whole range of legislation prescribing that top officials report their major financial holdings—as an openness feature designed to insure against unwarranted conflicts of economic interest on the part of federal appointees, plus legislation which limits the kinds of activity (at least for certain periods) that departing officials can engage in after they leave government—as an effort to discourage misuse of inside information on behalf of some client or for one's own aggrandisement.

Both the restrictions on one's post-government occupation and the demands for full financial disclosure suffer from focusing on external appearances as against the actuality or likelihood of conflicts of interest As I have observed elsewhere, it is naive to expect that these particular kinds of openness solve all problems by concentrating on the prospects of temptation instead of on the crime.<sup>4</sup>

#### OPENNESS IN THE FIFTY STATES

As with any governmental subject about the United States, one must always be reminded of the high degree of decentralisation in the American system. It is quite relevant to our subject here. Generally, the states were ahead of the federal government in enacting open-meeting or 'sunshine' laws for their state and local boards and commissions, but they lagged behind the national level in passing freedom of information or access-to-records laws.

By 1978 forty-eight of the fifty states had freedom of information statutes on the books, mostly paralleling the provisions of the federal law of 1966. State open-record laws usually do not include police logs or arrest records as available on demand, but there has been a long tradition on the part of the overwhelming preponderance of police departments to make these current records completely available to members of the press.

A major area of information still in controversy in many localities has to do with welfare records. Obviously, welfare recipients do not often relish having their dependency on the public weal widely known. Yet, a substantial proportion of public funds is usually involved, and many taxpayers feel that, embarrassing or not, those who foot the bill have a right to know how the money is being spent. This dilemma between the public character of the funds

<sup>4</sup>Space does not permit a full discussion of this subject here. The reader is referred to Chapter 16, "Public Service Ethics in a Democracy," in the author's book, *Public Personnel Administration*, 7th ed., New York, Harper & Row, 1976.

and the privacy of welfare recipients is not likely to be resolved with any finality in the foreseeable future.

Open meetings are another matter. All fifty states now have open meeting laws applying to both state and local agencies. Of course, legislative bodies, state legislatures, and city or other local councils, have long conducted their main operations in public view. Committees of such bodies, however, have not had a tradition of as much openness as has existed in the sessions of their counterparts in the national Congress. The main effect of the relatively recent open meeting or sunshine laws has been to place the burden on the instrument of government itself to justify secrecy. Generally, 'executive sessions' of councils, boards, et al, are countenanced when they consider such matters as personnel issues, parole hearings, briefings by staff members, and subjects relating to local aspects of the national government's responsibility for national security. Actually, many boards and councils have favoured open sessions as a sound public relations policy, regardless of any requirement of law. Aggressive local newspaper behaviour has often contributed to this practice.

Disclosure of officials' financial interests now is provided for in many state and local jurisdictions, although this has for the most part been a more recent practice than has obtained in the federal government. It is interesting that, so far as corruption in office is concerned (especially in the dealings between commercial firms doing business with the government and responsible officials), history has demonstrated a much greater proneness toward abuse (instances of bribery, favouritism, misuse of funds, etc.) in local government in the United States than at any other level. This reflects in my judgment not so much on the absence or recency of financial disclosure practices as on the greater lack of interest in local affairs and citizen neglect of local vigilance, in comparison with the high national concern with actions of the federal government.

#### THE UNRESOLVED ISSUES

We can perhaps accept as 'given' that too much secrecy in government is usually worse than too much openness. Nevertheless, the problems that arise in efforts to avoid or to offset secrecy do not suggest that attempts at resolution of this tension between secrecy and openness are simple. Not only are they extraordinarily complex and often engage conflicts in basic values, they frequently seem insoluble in any general sense and suggest that we will be debating specific issues for generations to come. Like in so many aspects of governance and administration, 'where you stand depends on where you sit.' Conscientious officials, with not the slightest tinge of desire to do anything except that which serves the general public interest, see the picture differently than the average citizen and certainly differently than the typical journalist or the self-appointed gadfly who sometimes makes a career of baiting public

officials.

I have already hinted here and there at some of the conflicts that plague this subject. Going beyond what I have already said about particular issues, such as executive privilege, practices of legislative bodies, and disclosure of financial interests, I feel a need to highlight several broad issues that are especially troublesome.

## The Impact of Television

A number of state and local legislative bodies have for some time been 'open' not only in the traditional sense but even more pointedly by having television cameras focused on them—at least when, in the judgment of the media, the subjects up for attention seemed to call for such instant publicity. Some city council heads and state legislators who initially opposed this exposure have found the experience constructive and conducive to better deliberation. Even the federal Congress is tentatively experimenting with allowing some of its activities to be televised. The practice has often been used in recent years for important committee hearings, although rarely have they been broadcast in full when they lasted more than a few hours. Now there is prospect that some instances of general House or Senate sessions will be broadcast.

The limited number of hours in a day and the many competing demands on television time make certain that this particular form of openness is not likely to prevail for any great share of legislative deliberations. Furthermore, there are many thoughtful persons who doubt whether this medium is really very satisfactory in the long run. It certainly provides a 'field day' for demagogic grandstanding by the less sincere members of the body and may drive underground a lot of the negotiating and compromising that would otherwise take place. This, of course, is also applicable to regulatory bodies that deal with even more technical and complex subject matters than do legislative assemblies. Finally, one might ask whether it is not better to confine openness of meetings to those who are interested enough to attend rather than expose them to the greater temptations of demagoguery incident to TV broadcasting.

## Interest in the Extraordinary

It seems to be an unavoidable disposition of the media, to say nothing of many individuals, to pay little attention to major issues and developments while spending an inordinate amount of time on trivia that is exciting, sensational, or highly charged with conflict or personal scandal. No wonder that many public officials shy away from too much exposure lest what they consider purely private matters become distorted by sensationalism in the press.

President Calvin Coolidge explained in his autobiography his own tightlipped philosophy of the 1920s: "Everything that the President does potentially at least is of such great importance that he must be constantly on

guard.... Not only in all his official actions, but in all his social intercourse, and even in his recreation and repose, he is constantly watched by a multitude of eyes to determine if there is anything unusual, extraordinary, or irregular which can be set down in praise or blame."

## Immunity of the Judiciary

Whether it is a reflection of the power of the legal profession in American society or some other phenomenon, it is indeed curious that, with all the avid interest in this country in open government, the judiciary goes almost scotfree of the desire to open up important deliberative sessions to public scrutiny. As I have pointed out, trials and hearings themselves are usually open but meetings of panels of judges and juries never are. No institution in this nation has had more impact on the life of our society than has the Supreme Court. Yet, no one but the participants and their subordinates have any knowledge of the give-and-take that leads to important decisions.

By no means do I mean to suggest that the situation be otherwise, but I can fully understand the executive official's envy of the pristine freedom that judges and juries have from the prying eyes of the press or the public in their arrival at judgments. Somehow we are content to rely on the results alone. Certainly one can properly deplore any exposure of a jury's deliberations. Can one imagine its discussion open to a surrounding public—with possible catcalls, demonstrators' yells, missile throwing, and the like? Not even the most avid libertarian contends that justice would be enhanced by such a process. However, some do press for just such exposure when it comes to regulatory agencies, administrative bodies, and legislatures.

So far, most deliberative processes are rarely invaded by outsiders, even in executive agencies, but they do not enjoy the immunity the courts seem to have from the contention that they *ought* to be so exposed. Should such a contention move much beyond its current state of doubt, the unfortunate consequences for free exchange of views, for mutual respect for different points of view, and for eliciting *genuine* viewpoints from all participants would be disastrous to contemplate.

## The Infirmities of a Free Press

Few would argue that a democracy's success and survival are not critically dependent on the leavening influence of the 'pitiless light of publicity.' But problems certainly arise over who has the power to focus that light. There seem to be these shortcomings in total reliance on a free press, privately financed and managed by a professional elite.

Haste and Journalism. Journalists operate in a perpetual state of haste. This partly accounts for their missing subtle movements and the significance of events in favour of the loud and the strident. And it explains in part their inability as generalists to understand fully what they are reporting.

Dominance of Bad News. Journalists resolutely resist culpability as to the

common charge that they consider only what is bad as being worthy of news. When the worsening of any condition (e.g., a strike a cost-of-living rise, a corruption charge, etc.) is automatically front-page news, but a significant improvement in the situation gets little or no attention—one wonders about the balance of the average journalist's philosophy. The problem is not that it is wrong to expose error or malfeasance but that preoccupation with iteither by neglect of alternatives or by the very flamboyancy of the display can profoundly affect what the public learns about developments of general interest. After all, the purpose of free press exposure is to keep the people informed. The tendency to ignore mundane news about how well things are going, in favour of what goes wrong, automatically gives a distorted image. It is the misleading impression that is every bit as dangerous to the general welfare as no news at all. Concentration on a fraction of events that reflect unfavourably on officialdom can lead to an extreme view that may not be justified. Even during the days of the Watergate exposures during the Nixon administration, few Americans and certainly far fewer non-Americans could see more than a picture of connivance, misrepresentation, and illegality in governmental operations. Never mind that the total performance of the administration in domestic and foreign affairs had by no means been a wholesale disaster. Never mind that the great mass of governmental processes were moving along with efficiency and honesty and care. Never mind that not one career civil servant had even been accused of wrongdoing. The public was rarely even reminded of these realities by the news media. And Nixon had become so discredited that nothing he said—even when the facts supported him—was accepted at face value.

Control of the Media. Newspapers and broadcasting stations are owned and operated by private interests in the United States. Most Americans are dependent on a single newspaper for their news of current events. The fact is that the media may not have direct power in the sense that an elected or appointed official may have, but the media's performance certainly has consequences. Even though the press may not initiate events or start major moves, its reporting clearly affects events. Yet, only a handful of influential men control both the reporting of news and the editorial opinions of the major media. Obviously, the protection of the broad public interest in these circumstances must rely on continued emphasis on a multiplicity of media outlets and on avoidance of over-concentration of ownership and control of press and broadcasting facilities.

Access to the Media. Parallel to the foregoing point is the question as to how competing points of view get expression. Monopoly of the press and television in some localities makes access to these powerful instruments of vital importance. Is freedom of the press merely for those who happen to own the devices for dissemination? Does not the first amendment need a more positive interpretation so as to protect the right of readers and listeners to a full range of news and public opinion? Can we rely on the ingenuity of public

officials themselves or of others who know how to get press attention to round out the facts on some issue or event? Few public officials dare to offset what they consider misrepresentation, lest they incur the resentment of journalists and make matters worse in the future. Certainly, however, few would suggest reliance on government issuances alone. As one astute observer says:

Making the media representative and giving expression to the intensely different voices among the American public will not be accomplished by substituting government control of the media for private control. The responsibility for providing opportunity for expression belongs to both the governmentally and the privately controlled media.<sup>5</sup>

### CONCLUSION

Having the most detailed and perhaps the most reassuring information-access laws and systems in the world obviously does not guarantee that the United States has the problems of secrecy in democratic government solved. Controversy and challenge continue. Tension between the media and official-dom remains almost as strenuous as ever. It is what one must expect in a vibrant, generally well educated, society. The problems are not different in kind from those existing elsewhere, only different in degree or, more accurately, in degree of refinement.

Apart from clearer definition and proceduralisation of access to government performance and materials, no mechanism has yet been invented to resolve the daily pull and tug between a free press and an ostensibly open government. The press, encumbered by corporate control, by the compulsion for haste and to see mostly the bad side of things, and by the limitation of generalists trying to master the ever-extending range of complexities in the hands of government specialists; and the government, eager to see the best face put on its works and subject to the sometimes overwhelming strains of administering next-to-unmanageable programmes, will continue to be in an adversary relationship.

Yet, government has had far more constraints placed on its behaviour than has the press. Both conventional doctrine and judicial interpretation have barely touched the more subtle and difficult issues inherent in a free press. No one has come up with the magic answers to: how can we trust the press? how can we be sure it reports (or even sees) the whole picture? how can we assume its integrity and farsightedness any more than that of responsible, elected officials? No third party 'regulation' seems practicable. In the long run, all we can count on is competition within and among the media themselves, the interplay between official and press views of issues and events, and, above all, an increasingly better educated and sophisticated population.

<sup>5</sup>Jerome A. Barron, Freedom of the Press for Whom? The Right of Access to Mass Media. Bloomington, Indiana University Press, 1973, p. 93. Mr. Barron is an authority on constitutional law.

# **Executive Privilege: Recent Trends**

### P. M. Kamath

THE POST-WORLD War II Presidents in the United States, beginning with Harry S. Truman, have made increasing use of executive privilege in their administrations. What is executive privilege? What is its nature? What is its basis—constitutional or otherwise? What are the recent trends in its use in practice? It is proposed to discuss some of the answers to these questions in this paper.

Executive privilege refers to the modern Presidents' claim for an absolute right to determine what information in their possession they would share with the two other branches of the government. Basically, it is a discretionary power to refuse to share information with the Congress. Such a presidential control over information is called the 'executive privilege.' Raoul Berger, a noted critic of executive privilege, defines executive privilege as "the President's claim of constitutional authority to withhold information from Congress...."

Nixon's Secretary of State William Rogers, while he was the Deputy Attorney General in the Eisenhower administration, defined executive privilege as:

the power of the President to preserve the integrity of his constitutionally assigned functions by withholding information the disclosure of which would impair the *process* by which the executive branch carries out those functions or would be contrary to the public interest.<sup>4</sup>

Executive privilege has to be distinguished from executive prerogative.<sup>5</sup> Executive prerogative, though claimed to be a concept as old as the organised government itself, has distinctly an imperial touch. The executive, in all forms of government, has claimed a degree of discretion to decide on the

<sup>&</sup>lt;sup>1</sup>Though our concern in this paper is restricted to sharing of such information by the executive with the Congress.

<sup>&</sup>lt;sup>2</sup>See Adam Breckenridge, *The Executive Privilege: Presidential Control over Information*, Lincoln, University of Nebraska Press, 1974, pp. 1-2.

<sup>&</sup>lt;sup>3</sup>(Emphasis added). Executive Privilege: A Constitutional Myth, Cambridge, Mass., Harvard University Press, 1974, p. 1.

<sup>&</sup>lt;sup>4</sup>See 'Secretary Rogers Statement on Executive Privilege,' The *Department of State Newsletter*, August 1971, p. 2.

<sup>&</sup>lt;sup>5</sup>The Oxford Dictionary uses 'prerogative' and 'privilege' as synonymous.

conflicting issues for which there are no answers in the existing law or conventions. Thus, executive prerogative is the power to act according to discretion without any legal prescription. According to the *Encyclopaedia Britannica*, "Prerogative in English law means the residue of discretionary power and legal immunities that are left in the hands of the Sovereign." Executive prerogative has a sense of being inherent in the body of the crown. However, executive privilege is something granted either to a person or to a body of persons by the constitution or by the law or merely a *claim* of the executive. Executive privilege can be considered as 'an immunity or exemption conferred by special grant,' on the executive branch of the government.

### CONSTITUTIONAL BASIS

Executive privilege, to be real, has to be 'conferred' by the constitution or the law. What is the basis of executive privilege claimed by the modern US Presidents? The executive branch has been generally reluctant to base the claim of executive privilege on the laws passed by the Congress even when they permitted such withholding of information. What the Congress has given through legislation it can take away any time. The executive branch has been looking for a more solid ground for its claim of executive privilege.

Presidents since Truman have seen executive privilege "rooted in the constitution." But the constitution nowhere speaks of executive privilege. The founding fathers were creating under the constitution a republic, not so much a democracy. The constitution speaks of the "privileges and immunities of citizens," but not of the privileges of the executive. Thus, in the Supreme Court hearings in Nixon's tapes case (U.S. vs. Nixon), on July 8, 1974, Justice William O. Douglas told Jaworski, the Watergate Special Prosecutor: "We start with a Constitution that does not contain the words 'executive privilege'". 11

Article II of the constitution vests the executive power in the President. The proponents of executive privilege have asserted the President's exclusive exercise of the executive power as the basis to decide what information the executive could share with the Congress.<sup>12</sup> But this seems to be a far fetched

<sup>&</sup>lt;sup>6</sup>Encyclopedia Britannica, Chicago, Encyclopedia Britannica Inc., 1973, p. 458.

<sup>&</sup>lt;sup>7</sup>Encyclopedia Britannica, Chicago, Encyclopedia Britannica Inc., 1961, p. 438 L.

<sup>&</sup>lt;sup>8</sup>Congress in Several legislations provide for the withholding information from the general public. See for details, Francis Rourke, *Secrecy and Publicity: Dilemmas of Democracy*, Baltimore, The Johns Hopkins Press, 1961, pp. 56-62.

<sup>&</sup>lt;sup>9</sup>Joseph W. Bishop, Jr., "The Executive's Right of Privacy: An Unresolved Constitutional Question," *The Yale Law Journal*, 66, No. 4 (1957), pp. 479-80.

<sup>&</sup>lt;sup>10</sup>See Art. IV, Sec. 2 and Art. XIV, Sec. I.

<sup>&</sup>lt;sup>11</sup>Quoted by Richard E. Cohen, "Court Hears Arguments on Extent of 'executive privilege,' "National Journal Reports, July 13, 1974, p. 1058.

<sup>&</sup>lt;sup>12</sup>See "Executive Privilege" (Statement by President Nixon, March 12, 1973), Weekly Compilation of the Presidential Documents, March 19, 1973, p. 253.

solicitation of a basis for executive privilege, since the same Article of the constitution in Section 3 says that the President "shall take care that laws be faithfully executed." It is the Congress as a law making body and the judiciary as a law interpreting body who could oversee whether laws have been 'faithfully' executed or not by the President. In that process, if the Congress needs information, the President cannot deny it.<sup>13</sup> But any article or section is good enough for those who are determined to trace executive privilege to the constitution. Because, it has been claimed that since the President is charged with the duty of 'faithfully' executing the laws, in the process, he alone has the 'inherent' right to decide what information could be given to the Congress. <sup>14</sup> The President's oath of office also binds him to "faithfully execute the office of President." <sup>15</sup> In brief, the President alone has the executive power and he alone decides on matters relating to his executive powers.

That being so, executive privilege has been traced to an unstated but, nevertheless, underlying theory of the separation of powers which distinguishes the American form of government from the parliamentary form. Thus, William Rogers traces the executive privilege neither to any statute nor to any administrative regulation but directly to the "constitution itself and the design of the founding fathers for a separation of powers between the executive branch, the legislative branch and the judiciary." The three branches are created equal and coordinate and one branch cannot force the other to do what it is not willing to do. Presidents have often, therefore, preferred to base their claim for unfettered discretion to exercise executive privilege on the doctrine of separation of powers.

The constitutional base for executive privilege is thus buttressed by combining together Article II of the constitution with the underlying doctrine of separation of powers. Taken together it is argued that executive privilege is "inherent in the scheme of government created by the constitution." <sup>17</sup>

The courts have generally refused to decide on the question of executive privilege. There have been no specific court cases on executive privilege till 1973. Even where the question arose generally, the court decisions, as Joseph W. Bishop says, are not much illuminating because they "furnish no guidance as to the inherent right of the executive to withhold information from Congress." However, in 1973, 33 Congressmen went to the Federal District Court, Washington D.C., questioning the executive's right to deny them the

<sup>13</sup>For detailed discussion see Berger, Executive Privilege, pp. 2-14.

<sup>&</sup>lt;sup>14</sup>Congressional Record, 93rd Cong., 1st Sess., Vol. 119, Pt. 6 (March 13 1973), p. 7414.

<sup>&</sup>lt;sup>15</sup>Art. I, Section. I.

<sup>&</sup>lt;sup>16</sup>"Secretary Rogers Statement on Executive Privilege," The Department of State Newsletter, August 1971, p. 2.

<sup>&</sup>lt;sup>17</sup>Memorandum of opinion of Arnold, Fortas & Porter, "Immunity of a Confidential Administrative Assistant to the President from Compulsory Process of a Congressional Committee," February 17, 1964, FG-II-8-1/Staff Aides, Johnson Library.

<sup>18&</sup>quot;Executive's Right of Privacy...", The Yale Law Journal, pp. 478-9.

information on the underground nuclear test at Alaska. Judge George L. Hart, Jr., refused to entertain the suit on the ground that "such a judicial determination would violate the separation of powers doctrine." However, a year later the Supreme Court in *United States vs. Nixon*, 1974, said: "The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the constitution." More enthusiastic protagonists of executive privilege find that such a privilege is widely used within the government not only by the President but by the legislature as well as the judiciary. Hence they prefer to call such a practice of withholding of information as "constitutional privilege." 21

Historically, the exclusive right to decide whether or not to share information with the Congress has been claimed by Presidents ever since the inception of the republic. However, it was certainly not claimed in the doctrinaire sense of executive privilege. George Washington used, for instance, functional differentiation between the two chambers of the Congress as a safe device to refuse information. In 1976, for example, he refused to submit papers relating to the Jay treaty to the House of Representatives on the ground that they had no 'right' to the papers. However, he later made available those papers to the Senate.<sup>22</sup>

### RECENT TRENDS

The details of historical incidents need not detain us here. But suffice it to say that such cases have been too few in between and hardly possess the strength of historical precedents. Executive privilege has been increasingly given currency since Eisenhower's administration first claiming it in the context of the McCarthy hearings in 1954.<sup>23</sup> However, it is difficult to agree when Arthur M. Schlesinger, Jr., says that, "no President or Attorney General used it before the Eisenhower administration."<sup>24</sup> President Truman had also used executive privilege. Truman, in fact, extended it to protect the President even after leaving the office. Truman in November 1953 refused to appear before the House Un-American Activities Committee and testify 'with respect to matters which occurred' during his tenure as President even though he had left the presidency. Of course, Truman did not call his claim as 'executive

<sup>&</sup>lt;sup>19</sup>Richard E. Cohen, "Information Gap Plagues Attempt to Grapple with Growing Executive Strength," *National Journal*, March 17, 1973, p. 388.

<sup>&</sup>lt;sup>20</sup>Quoted by Martin F. Richman (book review), "Executive Privilege: The Myth Lives On," Stanford Law Review, 27 (1975), p. 490.

<sup>&</sup>lt;sup>21</sup>"Department Discusses Powers on Providing Information...", State Department Bulletin, 67 (July 3, 1972), p, 32.

<sup>&</sup>lt;sup>22</sup>"Executive Privilege", Statement by Raoul Berger, Congressional Record, Vol. 118, No. 100 (June 20, 1972), pp. H. 5814-20.

<sup>&</sup>lt;sup>23</sup>Ibid., p. H. 5815.

<sup>&</sup>lt;sup>24</sup>The Imperial Presidency, Boston, Houghton Mifflin, 1973, p. 159.

privilege', but based his denial on the separation of powers.<sup>25</sup> However, what is new in the claim to withhold information by the executive, since the Eisenhower administration, is that the claim has been based on some constitutional considerations and making their claim to be an *inherent* aspect of government. The Eisenhower administration also extended it to cover a wide range of subjects.

According to Raoul Berger the term "'executive privilege' was not found in any dictionary of American politics before 1958". According to Schlesinger's study the term 'executive privilege' was first introduced in the official language by William Rogers, the then Deputy Attorney General of Eisenhower, in 1958. The use of executive privilege became so frequent in the Eisenhower administration that the Senate took an extra-ordinary step of refusing to confirm Lewis L. Strauss as the Secretary of Commerce. One specific ground for the Senate action was his excessive use of executive privilege to withhold information from the Congress while he was the chairman of the Atomic Energy Commission (1953-58). Arthur M. Schlesinger, Jr., has rightly put it: "The historic rule had been disclosure, with exceptions, the new rule was denial with exceptions."

Executive privilege since the 1960s has also taken new dimensions. The presidents have even seriously come to dislike speculation on the executive policies by journalists, Congressmen or the people. James B. Reston, for instance, came to know about the speech Johnson was going to make at the 20th anniversary of the UN and his plans to end the financial crisis faced by the international organisation. Reston had a column on it in the *New York Times*. Johnson was so furious on the leak of the information that he got the speech rewritten. As Reston says, "The doctrine of 'no speculation' is something new in the catalogue of presidential privilege."<sup>31</sup>

The Nixon administration, however, went the farthest in its claim of executive privilege. The right to withhold information, at the most a customary traditional claim of the executive, was elevated to the status of a constitutional right during the Eisenhower administration. But during the Nixon administration it became an all-embracing, inherent, and self-evident right. William H. Rehnquist, Assistant Attorney General stated, in 1971,

<sup>&</sup>lt;sup>25</sup>See President Harry S. Truman's letter to the Chairman of the House Un-American Activities. Breckenridge, *The Executive Privilege*, Appendix, pp. 164-7.

<sup>&</sup>lt;sup>26</sup>Executive Privilege, p. 1.

<sup>&</sup>lt;sup>27</sup>The Imperial Presidency, p. 159.

<sup>&</sup>lt;sup>28</sup>Normally it is customary for the Senate to confirm the Presidential nominees for the Cabinet posts. He is the eighth Cabinet nominee to be denied confirmation so far.

<sup>&</sup>lt;sup>29</sup>The New York Times, 20 June 1959, p. 8.

<sup>&</sup>lt;sup>30</sup>The Imperial Presidency, p. 157.

<sup>&</sup>lt;sup>31</sup>James B. Reston, "The Press, the President and Foreign Policy", Foreign Affairs, 44 (July 1969), 515.

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about the Nixon administration's definition of executive privilege:

The doctrine of executive privilege, as I understand it, defines the constitutional authority of the President to withhold documents or information in his possession or in the possession of the executive branch from the compulsory process of the legislature or judicial branch of the govern-

ment.32

In 1973 Nixon's Attorney General, Richard G. Kleindienst, made the most sweeping claim of executive privilege. According to him none could appear before the congressional committees and testify "if President so commands." He attempted to make impeachment a routine measure, what the constitution had provided as the extreme measure. As he said:

...if the President of the United States should direct me or any other person on his staff not to appear before a congressional committee to testify... he has the constitutional power to do so....<sup>34</sup>

If the Congress were to be unsatisfied with presidential withholding of information, it could either cut off funds to the President or impeach him.

If Truman had extended the protection of executive privilege to the Presidents even after their retirement, Nixon extended the same benefit even to his staff aides. As he put it: "Staff members must not be inhibited by the possibility that their advice and assistance will ever become a matter of public debate either during their tenure in government or at a later date." 35

## SECRECY AND EXECUTIVE PRIVILEGE

An important reason for the sudden growth in the use of executive privilege has been the compulsive need felt by the administrations for secrecy in the policy making process. The urge for secrecy was itself a product of the then prevailing political atmosphere of anti-communism and cold war. An important obsession with the Presidents was protecting secrecy of their policy making process.

<sup>32</sup>U.S. Congress, Senate, Hearings, the Committee on the Judiciary, the Sub-Committee on Separation of Powers, *Executive Privilege: The Withholding of Information by the Executive*, 92nd Cong., 1st Sess. (Washington, D.C.: GPO, 1971), p. 27.

33Congressional Quarterly, Almanac 29 (1973), 777.

<sup>34</sup>U.S., Cong., Senate, Sub-Com. on Intergovernmental Relations, Com. on Government operations; sub-com. on Separation of Powers and Administrative Practice and procedure, com. on Judiciary, Hearings, 93rd Cong. 1st Sess. *Executive Privilege: Secrecy in Government, Freedom of Information*, Vol. I (Washington, D.C. GPO, 1973), p. 30.

35" Executive Privilege" (Statement by the President, March 12, 1973), Weekly Compila-

tion of the Presidential Documents, 9 (March 19, 1973), 254.

In the 1960s there was a tremendous increase in the secrecy in the executive branch deliberations. Presidents Kennedy, Johnson and Nixon were excessively committed to preserve secrecy in their foreign policy making process. This commitment was reflected at all levels of the government and in all departments and agencies. As a result, secrecy has been so indiscriminatingly used that Robert Goralski is caustic when he says that until recently the US military classified even the amount of "peanut butter and toilet paper" purchased for the use of armed forces.<sup>36</sup>

In the Cuban missile crisis, for instance, the Soviet Union had all the advantages of secrecy in stealthily introducing atomic missiles in Cuba. But the US formulation of response to the crisis was not less shrouded in secrecy. Presidential advisers where almost competing with each other in maintaining utmost secrecy of the decision-making process. President Johnson also had conducted his Vietnam decision-making in such top secrecy that the planned escalation of the air and ground war in early 1965 was successfully kept a secret, so that the President could still maintain in public that he knew "of no far reaching strategy that is being suggested or promulgated", which would escalate the war.37 The Gulf of Tonkin incident and the US response to it in 1964 was such a tightly held secret that the element of deception that formed the basis of it was not realised either by the Congress or the public for atleast three years. In the case of the complete bombing halt, ordered by President Johnson on October 31, 1968, the dissemination of the information was so tightly controlled that only four persons knew it in the State Department.38

A concommitant aspect of administrative secrecy is the administrative leaks. Normally, administrative leaks are caused by those who are opposed to a dominant point of view on a particular policy. Having failed in their efforts to make the President accept their view point, or being unable to reach the President through the regular official hierarchy, individuals with an opposite view point try to publicise the existing differences within the administration in an effort to win the support of the press, the Congress and the public for their view point, <sup>39</sup> It is an attempt to build up an outside coalition for a particular view point, to pressurise the President and his men in favour of their point of view. All the recent Presidents and their men were worried about the premature disclosure of their thinking through leaks. Presidents Kennedy, Johnson and Nixon made constant efforts to tightly hold the information which they thought to be secret, by restricting access and devising ways and means to prevent leaks. Benjamin Read who as the Executive

<sup>&</sup>lt;sup>36</sup>"How Much Secrecy can a Democracy Stand?" *Lithopinion*, 7, No. 3 (Fall 1972), p. 78.

<sup>&</sup>lt;sup>37</sup>The Pentagon Papers, p. 400.

<sup>&</sup>lt;sup>38</sup>Transcripts, Benjamin Read Oral History Interview, p. 11, Johnson Library.

<sup>&</sup>lt;sup>38</sup>See Douglass Cater, Power in Washington: A Critical Look at Todays Struggle to Govern in the Nation's Capital, New York, Random House, 1964, p. 235.

Secretary in the State Department was in control of in-and-out flow of cables says that on the test ban treaty Kennedy had "almost pathological fear of press leaks."<sup>40</sup>

Of course, secrecy has been a part of the governments everywhere. The American constitution itself was born in secrecy. It was basically an aristocratic creation and generally secrecy is an attribute of aristocracy. Alexander Hamilton considered 'secrecy' as one of the virtues which made the executive eminently suited to conduct foreign affairs. Fever since the inception of the republic, to some degree, the conduct of foreign affairs has been always shrouded in secrecy. The secrecy has not only given the President greater powers in foreign affairs than the Congress but allowed him to dominate foreign policy making process.

Yet the constitution nowhere specifically empowers the executive to exercise the power of secrecy. For the majority had their apprehensions of the executive leadership. They reposed their trust in the Congress and their leadership. Thus the constitution empowers the Congress alone to decide on the need for secrecy. 42 But the Congress has consistently refused to enact an official secrets Act, similar to the one Britain or India has. In the absence of such an Act, the US executive, under certain circumstances, has taken recourse to executive privilege. 43

In a technical sense, a distinction between mere secrecy and executive privilege can be made. Secrecy operates within the administration as well as in the executive-Congressional relations. Within the administration, secrecy manifests through a classification system such as 'confidential', 'eyes only,' 'secret' and 'top secret,' These, in fact, act as information limiting devices within the administration. Several communications within the administration are made available to selected officials on a 'need to know' basis. It is not that Presidents maintain secrecy vis-a-vis the Congress, but occasionally they have kept secrets even from their own advisers in the area of national security.<sup>44</sup> Often sensitive cables have been tightly held by a few top officials within the administration.

The administrative secrecy vis-a-vis the Congress also operates at two levels. The executive need to maintain secrecy from: (1) the general public and (2) the Congress itself. Thus the communications with secrecy classification do not necessarily mean that they are not made available to the Congress. Under the presidential charge of secrecy, such communications have been

<sup>40</sup> Transcripts, Oral History Interview, p. 7, Kennedy Library.

<sup>41</sup> The Federalist Papers, New York, A Mentor Book, 1961, p. 462.

<sup>&</sup>lt;sup>42</sup>See Art. I, Sec. 5.

<sup>48</sup>See "Bizarre Demise of Political Trial," The Economist, May 19, 1973, p. 49.

<sup>44</sup>The former Secretary of Navy, James Forrestal, for instance, came to know of the US agreement with the UK on the use of atomic weapons only with mutual consent only after he became the Secretary of Defence in 1947; and that, not through the executive officials but through Senators Vandenberg and Hickenlooper. See John G. Palfrey, "The Problem of Secrecy," Annals, 290, November 1953, pp. 94-5.

occasionally shown to some Congressmen. The executive has also requested for closed sessions of the congressional committees whenever they have presented secret information to them. Often on major foreign policy crises, the Presidents have called the congressional leadership for a White House briefing or held secret consultations with relevant committees and leadership. In all such instances, while the congressional committees have shared secret information with the executive, it has been effectively withheld from the general public. What really differentiates executive privilege from secrecy is the underlying 'authority' of the President to say 'no' to the Congress for any kind of information, whether it bears administrative classification marks or not. But the effect of secrecy and executive privilege is the same: withholding information from certain people within the government.

### EXECUTIVE PRIVILEGE IN PRACTICE

Executive privilege has been exercised either by the President or by the officials of the executive departments. The latter types of claims by the officials might or might not be with the knowledge of the President. Adam Breckenridge does not consider it strictly as executive privilege, but prefers to call it as "subordinate claims of privilege." The exercise of executive privilege can also take place at two levels. The executive might refuse to submit reports, documents or communications sought by the congressional committees. Secondly, the congressional committees might ask an official of the executive branch to appear before them and share the information they are privy to. But the official might refuse to do so claiming executive privilege. The executive privilege of both these kinds have been claimed by the recent Presidents.

How often has executive privilege been exercised by the Presidents—Kennedy, Johnson and Nixon? Normally the answer to the question can be an index to determine the seriousness of the growing threat of executive privilege becoming an iron curtain to "shut off crucial information from Congress and the people." But not in the case of the exercise of executive privilege.

According to a study made by the government general research division of the Library of Congress on the use of executive privilege by the executive between 1961-1972, the Kennedy administration exercised executive privilege 13 times and the Johnson administration only thrice. The Nixon administration claimed executive privilege 11 times.<sup>47</sup> These instances in a span of twelve

<sup>45</sup> See The Executive Privilege, p. 58.

<sup>46</sup> Berger, Executive Privilege (preface), p. vii.

<sup>&</sup>lt;sup>47</sup>Of these, 5 cases in the Kennedy Administration and 2 in Johnson Administration relate to the refusal to provide governmental records, etc., while 2 and 1 case respectively in the Kennedy Administration and Johnson Administration relate to the refusal of witnesses to testify before the Congressional Committees. Congressional Record, Vol. 118, No. 100, June 20, 1972, p. H 5820.

years' governmental activity are so few; however, it is significant to note that most of these recorded instances relate to foreign/national security affairs.

First, the factual data does not help us because of the congressional deference to the President. In the post-World War II period, 'national security' has been an all-silencing concept. If the President says that his advisers would not testify before a congressional committee on a foreign policy crisis or any other vital issue, the committee chairman dare not take recourse to submitting a formal, written request for the testimony of the concerned adviser or for the production of the relevant papers or information. The aforesaid study also speaks of the difficulty faced by them in getting precise and specific information on such executive denials to submit information, since such requests are not normally put in writing.<sup>48</sup> The committee can be accused of lack of patriotism if it asks the President's intimate advisers to provide information on a current crisis through their testimony. Then there is a practical consideration: if the President's national security advisers claim executive privilege and refuse to testify, securing compliance to the committee request is still more difficult. The Congress has to cut off funds or impeach the President. Both are extreme measures and the Congress is most reluctant to exercise them. 49

Secondly, between 1961-1969 the Congress and the White House were both controlled by the Democrats. In such situations, the congressional deference to the President in foreign affairs becomes more than the usual. A Democratic Congress is unlikely to tell a Democratic President to make him available for testimony, compel him to share information withheld by him or his office. This does not mean that there is a greater sharing of information under such situations. In other words, the question of executive privilege becomes more important, vocal and controversial, when the White House and the Congress are controlled by two different political parties as it happened between 1955-1961, during the Eisenhower administration, and between 1969-1974, in the Nixon administration. Executive privilege was more often and more rigourously enforced in the area of scientific advice "when the executive and the Congress (were) controlled by different parties."50 Hence, it is more an indication of political distrust and rivalry between the two parties controlling the two branches of government than mere lack of information.

<sup>48</sup>See Congressional Record, 92nd Congress, 2nd sess., Vol. 118, Pt. 17, June 20, 1972, p. 21514. Also see Congressional Quarterly Weekly Report, February 10, 1973, p. 294.

<sup>50</sup> Scientific Adviser, Thomas E. Cronin and Sanford D. Greenberg (eds.), *The Presidential Advisory System*, New York, Harper & Row, 1969, p. 54. The first two years (1953-54), during that Administration Congress was also controlled by the Republicans,

<sup>&</sup>lt;sup>49</sup>Though beginning from 1967 Congress was actively opposed to the Vietnam War, it failed to cut off military appropriation. See *Congress and the Nation*, Vol. II, Washington, D.C., Congressional Quarterly Service, 1973, p. 944. Similarly, though the House Judiciary Committee voted to recommend impeachment of President Nixon, it felt greatly relieved when Nixon announced his resignation.

Thus, short of asking in writing for the testimony of the presidential advisers, from time to time the chairmen of the national security related committees, especially the Senate foreign relations committee, have informally asked, for instance, the national security adviser to appear and testify.<sup>51</sup>. They have also asked him to provide them the information relating to a particular crisis, through the State or Defence Department officials who have testified before them. Often Congressmen have also expressed their regrets, distress and annoyance at the fact that the man really in a position to provide them information has taken shelter under executive privilege and their inability to get all facts relating to a crisis. Thus, for instance, participating in the debate over the Dominican crisis of 1965, Senator Joseph Clark, a senior member of the Senate foreign relations committee said:

The...witness who I think should have been called was McGeorge Bundy... Mr. Bundy, in what I consider to be a disregard to the relevant precedents took refuge in executive privilege and refused to appear before the Committee. At one point he said he would come and have tea with us, but then he refused even to do that.<sup>52</sup>

### WHERE DO WE END UP

Broadly, one can observe four trends of thought on the basis of executive privilege: (i) constitutional, (ii) constitutionally implicit, (iii) practical, and (iv) constitutional myth (non existence of executive privilege). Some, like Raoul Berger, have taken the stand that executive privilege is a constitutional myth.53 Another extreme has been President Nixon and his spokesmen (during 1969-1974) who elevated executive privilege to the level of a constitutional doctrine. It is true that the constitution does not provide for specific privilege for the executive and in a narrow legal and constitutional sense it might be termed a 'myth'. Some others see executive privilege implied in the constitutional structure of the three branches of the government, more specifically the separation of powers. Senator Sam J. Erwin, Jr., (DNC), a constitutional expert, has gone on record saying that "executive privileges (sic) do exist in certain rare instances, and it's implied in the Constitution."54 Even the efforts to trace it to the theory of separation of powers implicitly is also not too convincing. Because, while the separation of powers might prevent any direct interactions between the President and Congress to secure executive accountability, it cannot be envisaged as preventing such interactions between the officials who perform executive functions and the

<sup>51</sup> Interview with Fulbright.

<sup>52</sup> Congressional Record, Vol. III, Pt. 18, Sept. 17, 1965, p. 24244.

<sup>53</sup> Executive Privilege, p. 296.

<sup>&</sup>lt;sup>54</sup>Quoted in "Democrats: Another Step Towards Congressional Clout", Congressional Quarterly Weekly Report, January 20, 1973, p. 67,

Congress. Hence, there is no *locus standi* to claim constitutionality to executive privilege.

But it is difficult to reject totally a President's right to withhold certain information from the Congress. Based on practical grounds, some are willing to accept the existence of executive privilege. The government's normal functioning needs some recognition of confidentiality, especially in the process of decision-making, which involves free play of changing, conflicting opinions and advice. It will be difficult to administer the affairs of the state, especially in the area of national security, if the congressional committee insists to know, for instance, what the presidential adviser whispered in the President's ears. It is also uncommon for the congressional committees to do so.

However, in the modern times, the doctrine of separation of powers has given place to "separated institutions sharing powers."55 This would mean that the government has moved to become a "shared administration."56 But the Congress should not go on a fishing expedition in the executive branch and the executive should not shut off the doors to the Congress whenever it needs some light. But whenever it has chosen to do so, for long it has been a matter of 'congressional dispensation.' It is based on congressional comity.<sup>57</sup> This is recognised by even those who, like Raoul Berger, reject altogether the concept of executive privilege.58 The congressional comity only means that in rare circumstances, the President could withhold information with an informal consent of the Congress.<sup>59</sup> In this sense executive privilege might still be needed to protect some information in the area of national security, like defence and defence related issues. This is really a case to relate executive privilege functionally rather than to an individual. Executive privilege could still protect the subject matter and not the person. Even in a functional context, trying to defend national security through executive privilege and secrecy in the absence of congressional cooperation, is atleast partly self-defeating in purpose, because, arguments of secrecy and executive privilege merely help to intensify congressional determination to get the information.

Others on practical grounds do not object to extending executive privilege

<sup>&</sup>lt;sup>55</sup>Richard Neustadt, The Presidential Power: The Politics of Leadership with Reflections on Johnson and Nixon, 1960, New York, John Wiley & Sons, 1976, p. 101.

<sup>&</sup>lt;sup>56</sup>Robert G. Dixion, Jr., "Congress, Shared Administration and Executive Privilege," Harvey C. Mansfield, Sr., (ed.), *Congress Against the President*, New York, The Academy of Political Science, 1975, p. 126.

<sup>&</sup>lt;sup>57</sup>See the comments of Rep. Moorehead participating in the debate over his amendment to Treasury postal service and General Government Appropriations Bill on June 20, 1972, Congressional Record, 118, No. 100, June 20, 1972, p. H 5813.

<sup>&</sup>lt;sup>58</sup>See Executive Privilege, p. 296.

<sup>&</sup>lt;sup>59</sup>See Norman Dorsen & John Shattuck, "Executive Privilege: The President Won't Tell," Norman Dorsen & Stephen Gillers (eds.), *None of Your Business: Government Secrecy in America*, New York, The Viking Press, 1974, p. 29.

to a small group of people serving the President as his staff aides. Senator Mansfield, former Senate majority leader (1961-1977), for instance, believes that the President "is entitled to have a few intimate advisers on the basis of absolute confidentiality who are not subject to (the) Senate confirmation." But he too would concede it so long as such aides "remain in close counselling relationship with the President" without any operational responsibilities. 60 Malcolm Moos who had served as Assistant to President Eisenhower also thinks that executive privilege has to be extended to the personal talks of the President with his cabinet members and staff aides. But he says "resorting to executive privilege too broadly is, and ought to be, a disturbing paradox...."

Then in practical operation it is still likely that the congressional need to know, and the executive's need not to tell, might clash. When there is such a conflict between the congressional demands for information and the executive's need to exercise the privilege, William Rogers and other proponents of executive privilege say that the ultimate test is the public interest or the national interest or the national security.<sup>62</sup> On that, all are agreed. But the question is, who is to determine what is in public interest. It has been argued that the executive prerogative is absolute and the President alone could decide on the actions necessary to preserve national interest. It is this that is disputed. If any branch of the government could claim to represent the public interest best it is the Congress. In any case, when the disputed information is in the custody of the executive branch, it cannot be the judge of its own decision to withhold the information. There is really no constitutional answer to the question; but one has to go to the political arena for an adequate resolution of the conflict. If the President feels the disclosure would seriously affect national security, Congressmen are not the enemies of the nation. They are equally, if not more, concerned about national security risks. As a matter of fact over the hard issues of national security. like atomic energy, the Congress would not ask for information; normally it is the administration which has taken initiative to share information, 63 Thus, when security on legitimate grounds is necessary, there is no reason why "secret consultations with relevant committees and leaderships" should not be an answer rather than the resort to executive privilege. 64

<sup>&</sup>lt;sup>60</sup>Quoted in 'Democrats...', Congressional Quarterly Weekly Report, Jan. 20, 1973 p. 68.

<sup>&</sup>lt;sup>61</sup>See "The Need to Know and the Right to Tell: Emmet John Hughes, The Ordeal of Power—A Discussion," Political Science Quarterly, 79, June 1964, pp. 171-3.

<sup>&</sup>lt;sup>62</sup>Rep. Nixon quoted the letter from President Truman of March 13, 1948 where the President had justified withholding of information "in the interest ... national Security..." Congressional Record, 80th Cong., 2nd Sess., 101-94, April 22, 1948, p. 4783.

 <sup>&</sup>lt;sup>63</sup>See John G. Palfrey, "The Problem of Secrecy," Annals, 290, November 1953, p. 93.
 <sup>64</sup>See Katzenbach, "Foreign Policy, Public Opinion and Secrecy," Foreign Affairs, 52, October 1973, 14.

In the ultimate analysis, the question of executive privilege is not so much a matter of constitutional principle (because all constitutional issues are political) but of the political needs of the exigency. Congressmen who have been critical of executive privilege have themselves exercised it when they came to occupy the White House. A typical case is that of Nixon. He had raised serious objections to President Truman's claim of executive privilege in 1948. In a Senate speech on April 22, 1948, he had said: "The point has been made that the President of the United States has issued an order that none of this information can be released to the Congress and that therefore the Congress has no right to question the judgement of the President in making that decision. I say that proposition cannot stand from a constitutional stand point..."65 During Nixon's Presidency he was asked at a news conference on March 4, 1971 whether he sees any limits on the exercise of executive privilege. He said: "The matter of executive privilege is one that always depends which side you are on." He not only in retrospect thought Truman was right in insisting upon it but executive privilege was "essential for the orderly process of government."66 The Democrats become critical of the Republican Presidents exercising executive privilege, but under their own Presidents Kennedy and Johnson they have for far too dangerously long tolerated executive privilege and secrecy.

The privileged information is not always privileged. Even national security related material can be divulged or leaked if that helps to bring political benefits to the administration. It is only a matter of who gets it, how much and when. Thus in foreign policy crises, where the decision-making has been successful, at least over a short range period, the White House and even the President would encourage the reporters to conduct an analysis of the decision-making giving a blow-by-blow account.<sup>67</sup> In such cases even the National Security Advisers were available to the reporters or even to academic scholars on a background basis. This was, for instance, the case in the Cuban missile crisis. Similarly, not all leaks are caused by those who oppose the official view. Occasionally the Presidents themselves favour leaks of view points favourable to them.<sup>68</sup>

Executive privilege and secrecy have been quite handy to the executive to remove from any public discussion the most crucial foreign policy decisions

<sup>65</sup> Congressional Record, 80th Cong., 2nd Sess., Vol. 94, Pt. 4, p. 4783.

<sup>66&</sup>quot;The President's Press Conference on Foreign Affairs," Department of State News-letter, March 1971, p. 2.

<sup>67</sup>See Douglas Cater, Power in Washington, pp. 230-1.

<sup>68</sup>Memo, Charles Maguire to Robert E. Kintner, December 8, 1966. It says: "The President noticed a letter from a soldier named Gerald L. Jordan in the DOD Monthly Report on Vietnam...and (he wants Kintner) 'to leak it to Joe Alsop (and) get him to quote it in a story." WHC Files, FG 105, Department of State, July-December 1966, Johnson Library.

in the name of national security.<sup>69</sup> Often administrative secrecy has been used to conceal the administration lapses or dubious conduct by the officials.<sup>70</sup> Nixon said that it has been indiscriminatingly used by the lower officials to conceal bureaucratic mistakes or to prevent embarrassments to officials and administrations.<sup>71</sup> Then, executive privilege has been used by the Presidents and their top men in the executive branch to avoid political embarrassment to themselves and not to protect national security information.<sup>72</sup> Executive privilege has been also used to cover foreign policy failures and practice public deceptions.<sup>73</sup> Increased use of executive privilege since 1961 has been necessitated by the successive failures suffered by the Presidents in foreign affairs. John K. Galbraith has observed that "secrecy is... occasioned by the intrinsically high failure rate...."<sup>74</sup> As Sen. Mansfield observed: "Once secrecy becomes sacrosanct it invites abuse."<sup>75</sup> In the ultimate analysis it destroys democratic process when it deceives the public and the Congress. It destroys,

<sup>69</sup>See Walter F. Mondale, "Restoring the Balance," Center Magazine, 7, No. 5, 1974, p. 31.

<sup>70</sup>For details see Rourke, "Administrative Secrecy," *The American Political Science Review*, 54, September 1969, pp. 691-92. Nicholas de Katzenbach, "Foreign Policy, Public Opinion and Secrecy," *Foreign Affairs*, 52, October 1973, p. 10.

71"Classification and Declassification of National Security Information and Material Statement by the President," Weekly Compilation of the Presidential Documents, March 13, 1972, pp. 543-4. A lighter side of the official secrecy is the fact that markings such as "eyes only", "top Secret", or "strictly confidential" are some ways to make the recipient of the memo to read it with atleast some seriousness.

72 The Pentagon Papers were denied to the Senate Foreign Relations Committee in the name of national Security. But when they were disclosed through a 'leak' it did not jeoparadise national security; except causing personal, political embarrassment to the former officials of the Kennedy and Johnson Administrations. During the Eisenhower Administration for instance when Emmet Hughes published The Ordeal of Power based on the personal papers maintained by him while serving Eisenhower as an aide in the White House, the question was raised as to how could a President's Adviser exercise executive privilege to withhold information from the Congress and public and publish memoirs based on inside papers. See Malcolm Moos, "The Need to Know and the Right to Tell: Emmet Hughes, The Ordeal of Power-A Discussion", Political Science Quarterly, 79, June 1964, p. 174. Similarly Haldeman in his book, The Ends of Power divulges that in the wake of the Sino-Soviet conflict of 1969. "There were several overtures by the Soviets for a joint venture in the surgical strike (against-China)". Based on his intimate, inside knowledge he also discusses the reactions of Henry Kissinger and William Rogers to the Soviet move. See Girilal Jain, "The 1969 Sino-Soviet Conflict. A US version on Nuclear Threat," The Times of India, Bombay, February 23, 1978, p. 8.

<sup>73</sup>The extreme use of executive privilege to cover up the criminal misdeeds by the White House Assistants and his own involvement in them, of course came during the Nixon Administration under that omnibus term—Watergate. See Newsweek, December 2, 1974, pp. 30-1. This is ironic, because, while those activities were going on, Nixon maintained that executive privilege will not be used as "a shield to prevent embarrassing information" being made available to the Congress. See his statement on Executive Privilege, March 12, 1973, Weekly Compilation of Presidential Documents, March 19, 1973, p. 254.

74"A Decade of Disasters in Foreign Policy," Progressive, February 1971, p. 36.

75 Congressional Record, Vol. 100, Pt. 3, March 10, 1954, p. 2987.

politically, the President, as happened with Johnson and Nixon, in different ways. 76 Thus any use of executive privilege generates a congressional sense that the executive is seeking to hide some of its failures.

Thus, when the congressional committees perceive that there are unstated purposes and unpronounced reasons underlying a policy decision, they are likely to probe deeper into the information available in the executive pigeon holes. The Congress is unlikely to be satisfied if the President exercises executive privilege. Rather, the exercise of executive privilege is considered as an indication that everything is not well with the executive branch. Martin F. Richman, the former Deputy Assistant Attorney General (1966-1969) observes: "Conflict over executive privilege is generally a symptom of the existence of several political conflicts between the Congress and the President..."77 Political differences between the President and the Congress. the possibility of causing political embarrassment, and also exposing corruption, misdeeds and failures of the executive branch are also important forces which make the Congress to seek information or the testimony of an official. That is after all an important function of the Congress. Again, it is a matter of congressional perception of the role of a particular official in the process of decision-making that make them to insist on a testimony by him. Thus, for instance, it is only when the Congressmen perceive that the National Security Adviser has been influential or more influential than the Secretary of State in moulding the ultimate presidential decision, that they feel being denied the relevant information because of his immunity from congressional questioning.

Executive privilege, as Senator Mansfield said, cannot be 'all embracing.'<sup>78</sup> It cannot be as Senators Sam Erwin and Edmund Muskie said 'eternal privilege,'<sup>79</sup> by covering the important and influential officials in the White House, while in office, and after they leave the office. Especially, the extension of executive privilege to the important White House officials has really threatened to reduce executive accountability to the Congress to a meaningless concept. That has distorted the essence of democratic government and informed citizenship. Senator Robert C. Byrd (D.W.V.) has rightly observed when he said that "the indiscriminate use of executive privilege ... can only serve to distort...and injure the credibility of the government."<sup>80</sup>

<sup>&</sup>lt;sup>76</sup>Deceptive escalation of the Vietnam war ultimately forced Johnson out of the Presidential race in 1968. Deception, secret war in Cambodia and secret-violations of domestic laws forced out Nixon from the Presidency in 1974.

<sup>77&</sup>quot;Executive Privilege....", Stanford Law Review, 27, June 1975, p. 503.

<sup>78</sup> Congressional Record, 93rd Cong., 1st Sess. Vol. 119. Pt. 6, March 13, 1973, p. 7414.

<sup>&</sup>lt;sup>79</sup>Quoted by Schlesinger, Jr., The Imperial Presidency, p. 251.

<sup>80</sup> Congressional Record, 93rd Cong, 1st Sess., Vol. 119, Pt. 6, March 13, 1973, p. 7414.

# Secrecy in Government in Australia

## A. Hoyle

Totalitarian capitals apart, only official Canberra comes close to matching that special aim of furtive reticence which marks the Ottawa mandarins off from other men.<sup>1</sup>

THIS STATEMENT, although it was made in 1969, is still applicable to the operations of the Australian government a decade later. There has been a progressive diminution in reticence and secrecy in many other democracies but comparatively little change in Canberra or in the capitals of the various states. For an understanding of why Australian governments should lag behind the clear move to greater freedom of information it is necessary to have an appreciation of Australian history since European settlement began almost two centuries ago.

Four of the six original colonies in Australia, New South Wales, Tasmania, Queensland and Western Australia, were either established as settlements for convicts transported from the United Kingdom or later found it necessary to accept convicts for economic reasons. Understandably, the convict settlements were ruled autocratically by a governor, appointed by the crown and supported by troops and a small number of free officials who were separated from the convict mass by their freedom, their birth, their education and their training. In the interests of safety, order and efficiency, the political and administrative activities of the governments were kept as confidential as possible.

In the early part of the 19th century there was a substantial influx of free settlers into the Australian colonies who brought with them a demand for the rights and privileges enjoyed by free citizens in Britain and for the end of convict transportation. Under pressure from the local press and a vocal minority of settlers, transportation was ended to most parts of Australia in the 1840s and there was a quick progression in democracy from advisory councils to the governors to full self-government in the 1850s. The responsible governments which were established were copies of the imperial government

<sup>&</sup>lt;sup>1</sup>Report of the Royal Commission on Australian Government, Canberra 1976, Volume 2, p. 2.

in London, with the parliaments and the civil services adopting the conventions and methods of the Westminster system. This basic reliance on Westminster precedents and attitudes has continued largely unmodified to the present day, despite the federation of the colonies in 1901, a mass immigration policy and the replacement of membership of the British Empire with membership of the looser British Commonwealth of Nations.

A discussion of secrecy in government in Australia therefore needs to be seen against the background of an ex-colonial country which has complete independence and political freedom but still maintains much of the ethos and most of the methods and attitudes to government which were developed in Britain in the 19th and early 20th centuries.

The trained official hates the rude, untrained public.2

This well-known statement of Walter Bagehot is as true today in Australia as it was when he made it in Britain in 1867 and shows itself in the marked reluctance of officials—and ministers of state—to give more than the barest information to a literate, increasingly well-educated Australian community. In Australia, governments at commonwealth, state and local level employ almost 25 per cent of the work force and they control almost all facets of national life. Despite this, all governments have introduced and maintained both formal and informal codes of behaviour which effectively prevent both politicians and civil servants from revealing most of the policies and decisions of government and how these decisions and policies have been arrived at.

Under the doctrine of the collective responsibility of the cabinet, ministers have always declined to reveal information on matters which were not their own responsibility or to comment on decisions of the government which they are not responsible for implementing. In Canberra conservative governments (which have been in office for most of the time since federation in 1901) have been successful in maintaining a high level of secrecy regarding cabinet decisions and how they were made. Labour governments have been noticeably less successful in keeping the secrecy of decisions and Labour prime ministers have been often unsuccessful in preventing important leakages of information to the media.

Australian ministers, at both federal and state level, have been concerned to maintain a close control over political and administrative information so that they can maintain freedom of action, unhampered by critical public comment and because, under the system of government, they are still held responsible for the policies and major decisions of their departments. The doctrine of 'ministerial responsibility' has been eroded in recent times and there is little evidence that a minister's responsibility is now seen as requiring

<sup>&</sup>lt;sup>2</sup>R. Spann, Public Administration in Australia, NSW, Govt. Printer, 1973, p. 352.

him to accept the blame for all the faults and shortcomings of his department.<sup>3</sup> However, ministers still have to face the possibility of embarrassing questions in parliament and from an importunate media and a controlled flow of information makes their job much easier. Press statements from ministers are a regular feature of Australian government but their usefulness in informing the public is very limited for they are usually concerned to maintain a favourable public image of the minister and rarely give the background information which is necessary in making an assessment of the value of the decision or decisions announced.

Cabinet documents in Australia are 'privileged' documents which are normally available only at the discretion of the government. Recent events, in a long-running case brought by a private citizen against members of the previous Labour government, have shown that even the courts may not be able to obtain access to important documents which a government does not wish to produce or even to question senior civil servants whom the government of the day does not wish to give evidence.<sup>4</sup>

The deliberations of the major political parties in Australia are normally kept as secret as possible. The Liberal and Country Parties usually manage to keep their deliberations confidential, although at times disgruntled members will give their version of events and processes to the media. Fortunately for reporters and academics the details of meetings of the Labour Party are much better known. Despite constant efforts to prevent leakages of information, the activities of the Labour Party caucus are widely reported in the media. Journalists cultivate good relations with members who may be expected to talk and, as a result, most reports of caucus meetings, and reports of Labour Party policy decisions, are quite accurate.

In sensitive areas, involving national interest, such as defence and foreign affairs, information is often known to journalists through 'background briefing' by ministers or through information received from Australian and overseas sources. Such information is rarely revealed publicly before the government wishes. This is accomplished partly through the issue of 'D' notices which effectively (although not legally) ban the publication of the information, but more often through a sense of responsibility on the part of both journalists and editors and their realisation that if they publish this information they will be excluded from briefings.

Partly through the operation of quite severe libel laws, and partly through lack of a tradition, investigative journalism, of the type which exposed the Nixon administration in the United States, is not well developed in Australia. As a result, scandals involving politicians and administrators may continue for a long time before being revealed to the public. When such a scandal

<sup>&</sup>lt;sup>3</sup>Report of the Royal Commission on Australian Government Administration, Volume 1, p. 60.

<sup>&</sup>lt;sup>4</sup>The Sankey case in which a Sydney solicitor, Mr. D. Sankey, brought charges against four members of the Whitlam Government.

does finally emerge, Australian governments frequently take refuge in the device of a royal commission—usually headed by a judge—whose terms of reference are determined by the government of the day and may be so written that a minimum of information is released. Evidence to royal commissions is usually open but it may be given *in camera* and, on occasions, reports, when published, may be almost unobtainable by the public.<sup>5</sup>

Major policies may be made or approved by ministers but they are often generated by civil servants who, furthermore, usually have the responsibility for implementation. Australian governments have, ever since responsible government was granted, been concerned to completely control the information which civil servants may give to the public.

The Commonwealth Government, with wider areas of concern, has been particularly zealous in devising legislation to control the release of information but the state governments have not been far behind. The prime instrument for the control of information from the federal government is the Crimes Act which lays down that:

- 1. A person who, being a Commonwealth Officer, publishes or communicates, except to some person to whom he is authorised to publish or communicate it, any fact or document which comes to his knowledge, or into his possession, by virtue of his office, and which it is his duty not to disclose, shall be guilty of an offence.
- 2. A person who, having been a Commonwealth Officer, publishes or communicates, without lawful authority or excuse (proof whereof shall be upon him), any fact or document which came to his knowledge, or into his possession, by virtue of his office, and which, at the time when he ceased to be a Commonwealth Officer, it was his duty not to disclose, shall be guilty of an offence.

The maximum penalty for a breach of the Act is imprisonment for two years.<sup>6</sup>

This legislation is backed up by a regulation under the Public Service Act which makes it an offence for any civil servant to "use for any purpose, other than for the discharge of his official duties, information gained by or conveyed to him through his connexion with the Service".7

Further regulations<sup>8</sup> prohibit "disgraceful or improper conduct" and this has been interpreted as releasing information without authority and attacking the policies of the government concerning the enterprise of which the civil servant was a member.

 $<sup>^5</sup>e.g.$ , the Report of the Royal Commission into the Suspension of Civil Administration in Papua was not published and only a few roneo copies exist,

<sup>6</sup>Crimes Act 1914-1973, Section 70.

<sup>&</sup>lt;sup>7</sup>Public Service Act 1922-73, Regulation 34,

<sup>8</sup> Ibid., Regulations 55-56.

This rather draconian legislation has successfully inhibited most civil servants from breaching the secrecy of government administration but in recent years leakages of information—even in sensitive areas—have become a source of some embarrassment and occasional witch hunts in the bureaucracy. In practice a blind eye is turned to many technical breaches of the rules, but most Australian civil servants have no desire to break government rules on the secrecy of information. Junior officers are not usually in possession of much information of interest to the public and almost all senior officers are thoroughly imbued with the belief that the public should be told only what it has to know. Many of them believe that it is the responsibility of the minister to determine what information should be released and it is probable that most ministers share this viewpoint.

Others believe that the widespread release of information, especially that showing how policy decisions were arrived at, would reduce their effectiveness because they would be much more circumspect and would commit much less to paper if they felt that what they wrote would be available for public scrutiny.

The common move in democratic countries for access to government information has been reflected in Australia by the public commitment of recent Commonwealth governments to freedom of information. The Whitlam Labour Government in 1972 pledged itself to a new policy of open government and the present Fraser Government is similarly committed. However, the natural reluctance of most ministers and senior public servants to move into a totally new situation and the difficulty of making a policy of free access work within the parameters of the Westminster model, have meant that there has been very slow progress.

The Royal Commission on Australian Government Administration in 1976 urged greater openness and freedom of access to information about government processes<sup>10</sup> but it declined to endorse or recommend a specific draft Bill. A long running inter-departmental committee recommended that freedom of information legislation should not be concerned to authorise the release of material not lawfully available at present but to compel the release of much material that is now made available, if at all, at the discretion of individual ministers.<sup>11</sup>

A Senate committee is currently studying the issue and has received advice from departmental heads that a statutory right to freedom of information would involve a considerable increase in the number of staff employed, would impose an extreme burden on ministers and permanent secretaries, and could force a new relationship between ministers and civil servants.<sup>12</sup>

<sup>&</sup>lt;sup>9</sup>R.C.A.G.A. Report, Volume 2, p. 3.

<sup>&</sup>lt;sup>10</sup>Ibid., Volume 1, p. 350.

<sup>&</sup>lt;sup>11</sup>*Ibid.*, Volume 2, p. 169.

<sup>&</sup>lt;sup>12</sup>The Canberra Times, March 15, 1979, The Australian, March 7, 1979.

The prospects for a quick passage of freedom of information legislation and a consequent release of government documents do not appear bright. As one of the Royal Commissioners wrote:

There is reason to believe that... a commitment to secrecy will persist. It is self evident that administrative discomfiture can in many, if not most, circumstances be avoided by a prudent economy in making official information publicly available. Caution, anonymity and circumspection in releasing information which potentially could be put to hostile use, are reliable assets for any administrator who wishes to avoid controversy (and recrimination).<sup>13</sup>

The demand for the release of government information in Australia has not come from the public, which displays only a fitful interest in government, but from political parties which are currently in opposition, from the media, from academics in the social sciences and from a few special interest groups who suspect they are not being treated sympathetically by the minister or the bureaucracy.

On a more general level there remain many problems in overcoming secrecy in government in Australia. One of the more important, but less publicised, is the problem of obtaining information from statutory authorities. The Commonwealth Government alone has some 170 statutory authorities with twice as many employees as there are in the 'career' public service. Almost all of these authorities are required to issue annual reports. The reports are generally notable not only for their variety, but also for how late many of them are—some are up to four years late—and how little information they contain. The production of a 'glossy' report is offered by some statutory authorities in place of one containing detailed information about the goals. policies and procedures of the organisation. Most public attention has been centred in the freedom of information debate, on the policy making departments and little attention has been given to the failings of statutory authorities. This is all the more surprising as some authorities consume very large resources and, in at least one case, appear to dominate the government of the state in which it operates.14

The policy of secrecy in Australian government is not confined to current, or recent, activities but extends to activities more than a generation old. Archives are not well developed in Australia and a great deal of important historical material has been destroyed. Where it is still available it is sometimes poorly housed and not easy of access. Furthermore there is a general 30-year rule which ensures that researchers cannot expect to be given access to any records less than 30 years old. Even if records are 30 years old there are often considerable delays in obtaining them, as they must be processed to

<sup>13</sup>R.C.A.G.A. Report, Volume 2, p. 2.

<sup>&</sup>lt;sup>14</sup>The Hydro Electric Commission in Tasmania.

remove any 'sensitive' records and departments may still forbid access to them.

It has been said that Australians have a talent for bureaucracy.<sup>15</sup> Equally it might be said that Australian governments have, through long practice, acquired a talent for secrecy.

It is a serious matter in a modern democracy to keep most of the operations of government largely secret from the public and even more serious that a sustained demand for openness of government has been so long in arising in a generally well-educated populace.

A general acceptance of government paternalism, fostered until recently by affluence, which made it possible to meet the demands of many special interest groups, and a general easy-going approach to life, may account for a general community acceptance of secrecy in government but it does not excuse the academic community, the media, and politicians for their lack of action.

The academic community, particularly that part of it which is concerned with the study of public administration and political science, has generally been able to carry on its work through the personal contacts of individual academics with politicians, senior public servants and experienced graduate and undergraduate students. This method has the advantage of sometimes giving privileged access to information but is no substitute for a general opening of the activities of government to scrutiny and analysis. Education in public administration is generally undeveloped in Australia, not least because of the paucity of reliable information on and reviews of the policy-making activities of government.

In a similar fashion the media has generally been content to accept the ethos of secrecy in government and to operate through cultivating individual ministers and civil servants from whom it can regularly obtain unattributable information.

Politicians who aspire to ministerial office are unlikely to support demands for much less secrecy in government when it is clear that senior ministers feel that the maintenance of confidentiality is in both party political and governmental interests. Australian experience has shown that it is only politicians who are out of office or who believe that they have little chance of reaching ministerial rank who are likely to work for openness in government.

Secrecy in government in Australia, at both state and federal level is, as a result of a slow shift in community values, under increasing attack. The examples of how foreign governments have greatly reduced governmental secrecy have placed the proponents of secrecy on the defensive for the first time. But with an apathetic public, a long tradition behind it and, at best, only lukewarm support for open government from ministers and senior civil servants, Australian governments seem set to maintain secrecy—in fact if not in theory—for a long time to come.

## Openness and Secrecy in British Government

## **Gavin Drewry**

WIDELY used textbook on British politics draws a sharp contrast between the 'liberal' assumption that the public has 'a right to know', and the 'Whitehall model of communication' which assumes information to be a scarce and costly commodity, not to be freely exchanged.¹ The notion that attitudes towards openness in government can be dichotomised in this way is pervasive in political and academic discussion, but it imposes an artificial rigidity upon what is in fact a highly complex and elusive subject. It may even be downright misleading in encouraging a teleological approach—depicting a disjointed and often mundane debate as an epic struggle between forces of light and darkness, with every symptom of greater 'openness' being greeted as a milestone on the road of progress towards democratic enlightenment.

Such an implicit assumption has often been evident in speculation about the desirability and feasibility of achieving a more 'open' style of government that has been going on sporadically in Britain since the mid-1960s. The debate has been entwined with interminable arguments about reforming the apparatus of central, local and regional government, which in turn have been reinforced by a general atmosphere of gloom about the country's declining world status and its dismal economic performance. The same sense of crisis may have undermined the traditions of public deference and acceptance of hierarchy which, as the American sociologist, Edward Shils, argued in the relatively prosperous mid-1950s, have helped to underpin the 'unequalled ... secretiveness and taciturnity' of the British ruling class.<sup>2</sup> However, diminished national self-confidence may also have had the opposite effect of driving the bureaucrat still further behind his defensive 'bulwark of secrecy'.

The use of a phrase like 'open government' obscures the fact that the very concept of 'government' is an elusive one. Reference is sometimes made to a British ruling 'establishment', with 'inner' and 'outer' circles of power-holders linked, albeit loosely, by shared language and manners of conduct.<sup>3</sup> The distinction between 'governors' and 'governed' is blurred

<sup>&</sup>lt;sup>1</sup>Richard Rose, *Politics in England Today*, London, Faber and Faber, 1974, p. 211.

<sup>&</sup>lt;sup>2</sup>Edward Shils, *The Torment of Secrecy*, London, Heinemann, 1956, p. 49.
<sup>3</sup>For example, Jean Blondel, *Voters, Parties and Leaders* (revised edn.), Harmondsworth, Penguin Books, 1974, ch. 9.

by the proliferation of 'quangos' and by the network of links (via government contracts, industrial development grants, etc.) between private and public sectors.<sup>4</sup> In discussing government secrecy, how far should we cast our net away from 'government' into the oceans of 'quasi-government' and even 'non-government'?

Moreover, the political debate about open government in Britain has often deployed a populist vocabulary which sets all kinds of traps for the unwary. Contemporary pluralism endows the word 'public' with a restricted meaning. A bureaucracy may be regarded as 'open' to the extent that it consults with its specialised 'publics'. Pressure groups are accepted as part of the democratic environment of decision-making, and some of them have also played an important part in achieving greater openness, notably in matters to do with the protection of the environment and with consumer safety. 'Participation in planning's is still a fashionable phrase, and it has acquired some reality in such contexts as the debates about the need for and location of nuclear power stations, motorways and a third London airport.

Notwithstanding recent experiments (in unusual political circumstances) with referendums, a major argument for open government in its widest, populist sense, is to counteract the widespread apathy and ignorance that characterises British political culture. Introducing a recent White Paper on the reform of official secrets legislation (see below), the then Home Secretary, Mr. Merlyn Rees, was goaded by criticisms from his own backbenches into retorting: "When my hon. friend talks about people outside [parliament] being worried, I can only express the wish that at the election he finds more than two or three people in his constituency who are concerned about it." This assertion may well accord with reality, but arguably it strengthens rather than diminishes the case for open government.

A British academic suggests that "there is little evidence of widespread public demand for more official information. The fuss comes from some professional communicators and interest groups dissatisfied when governmental decisions go against them." The problem of open government, if indeed it is a 'problem', lies very much in the eye of the beholder and in the standpoint from which he beholds. None of the limited range of people likely to have strong views about open government is likely to look at the

<sup>4</sup>D.C. Hague, et al., Public Policy and Private Interests, London, Macmillan, 1975. Cutbacks in the number of Quangos and a drastic reduction in the scale of government intervention in the private sector are among the declared objectives of Mrs. Thatcher's 1979 Conservative administration.

<sup>5</sup>Viz. the Report of the Skeffington Committee, *People and Planning*, HMSO 1969. See also Dilys Hills, *Participating in Local Affairs*, Harmondsworth, Penguin Books, 1970. For a recent analysis of the role of groups see J.J. Richardson and A.G. Jordan, *Governing Under Pressure*, Oxford, Martin Robertson, 1979.

<sup>6</sup>H.C. Deb, 19 July 1978, cols. 536-50, at 546-7.

<sup>7</sup>G.W. Jones, "What is Really Needed in the Debate on Open Government", *Municipal Review*, September 1977, pp. 177-8.

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subject with an open mind. 'Every bureaucracy', Max Weber tells us, "seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret"s: why should the civil servant in Whitehall be peculiarly immune to this cast of mind? Ministers might be expected to absorb some of the values of the bureaucracies they command; but they are also parliamentarians, well able to understand, if not to share, the aspirations of the backbenchers that they themselves once were and may one day become again. Those outside the inner circles of government seek access to private knowledge and to the linguistic codes by which the members of the inner circle recognise their own kind. A recent journalistic expose of the secret network of cabinet committees (see below) quotes a former Whiteall economic adviser as saying: "In conversation, it helps Civil Servants to separate the ins from the outs. If I happen to quote the wrong name for the principal economic committee, then it shows I'm not an important fellow any more."

No political journalist will admit to an aversion to open government; but his professional standing is enhanced by the continuing scarcity of the commodity in which he deals and by his continuing to be the only retail outlet. Every student of public administration (including the present writer) has a professional axe to grind about access to the raw material of his subject.<sup>10</sup>

Thus the debate about openness and secrecy in British Government is ramified, and is riddled with all kinds of potential pitfalls. The remainder of this paper will outline some recent developments in the subject in just a few of its numerous aspects.

## THE OFFICIAL SECRETS ACTS

Legislators tend by definition to regard legislation as the primary means for effecting substantial policy changes. Consequently, much political discussion of government secrecy has centred upon shortcomings in criminal statutes directed against the improper revelation of official secrets. But the Official Secrets Acts also have a symbolic function which transcends their ostensible significance as devices for prosecuting alleged enemies of the state; their existence, in the absence of laws obliging public authorities to disclose information, means that the law's main contribution to the subject of official information has been a negative one.

<sup>8</sup>H.H. Gerth and C. Wright Mills (eds.), *From Max Weber*, London, Routledge and Kegan Paul, 1948, p. 233.

<sup>9</sup>Bruce Page, "The Secret Constitution", New Statesman, 21 July 1978, pp. 72-6, at p. 73. <sup>10</sup>There has been recent concern about the weeding of official documents due to be made available for study under the 30-year rule prescribed by the Public Records Acts 1958 and 1967. An official inquiry into the workings of the Acts was set up in August 1978 under the chairmanship of Sir Duncan Wilson.

The history of the Acts is documented elsewhere. <sup>11</sup> Section 1 of the Official Secrets Act 1911 is concerned with espionage and, although at least one conviction under the section has been severely criticised, <sup>12</sup> it need not concern us here. Indeed most of the provisions of this Act, which was amended in 1920, and again in 1939, are peripheral to the present discussion. The significant section is Section 2, which covers a number of offences, under the general heading of 'wrongful communication etc. of information': Subsection 1 makes it an offence (a) to communicate official information to an unauthorised person, or (b) to retain any official document without authority, or (c) to fail to take care of any official document. Section 2 (2) makes it an offence to receive any official document knowing, or having reasonable cause to believe, that it was communicated in contravention of the Act. <sup>13</sup>

The actual number of prosecutions under Section 2 has been very small.<sup>14</sup> The most recent instance resulted in the conviction of three defendants in November 1978, after a long and costly trial, in connection with magazine articles about the Government Communications Headquarters; the defendants were conditionally discharged and made to pay costs, but the case gave even wider currency to the secrets which were the subject of the prosecution.<sup>15</sup>

In 1969 the Fulton Report on the Civil Service, complained that 'the administrative process is surrounded by too much secrecy', and called for an official inquiry. Some of its remarks were distinctly 'populist' in tone: "the fuller the information the closer the links between government...and the community; the smaller the gap of frustration and misunderstanding between 'them' and 'us'. Fulton also suggested that civil servants should be allowed to go further in explaining the work of their departments. The Wilson Government responded with a White Paper which noted that important steps towards openness had already been taken, notably through the publication of official forecasts and consultative Green Papers. But some of its

<sup>&</sup>lt;sup>11</sup>David Williams, *Not in the Public Interest*, London, Hutchinson, 1965; Harry Street, *Freedom, the Individual and the Law* (4th edn.), Harmondsworth, Penguin Books, 1977, ch. 8. See also the Franks Report on Section 2 of the Official Secrets Act 1911, four volumes, Cmnd. 5104, September 1972, discussed in this article.

<sup>&</sup>lt;sup>12</sup>D. Thompson, "The Committee of 100 and the Official Secrets Act, 1911", (1973), Public Law, pp. 201-26.

<sup>&</sup>lt;sup>18</sup>I have oversimplified some complex legislation; for a useful commentary and summary see the Franks Report, *loc cit.*, vol. 1, Appendix I.

<sup>14</sup> Ibid., Appendix II.

<sup>&</sup>lt;sup>15</sup>See substantial articles in *The Guardian*, 18 November 1978 and the *Sunday Times*, 19 November 1978.

<sup>16</sup>Cmnd. 3638, June 1968, paras. 277-80.

<sup>17</sup> Ibid., paras. 283-4.

<sup>&</sup>lt;sup>18</sup>Information and the Public Interest, Cmnd. 4089, June 1969.

<sup>&</sup>lt;sup>19</sup>The first green paper appeared in April 1967; see J.G. Ollé, An Introduction to British Government Publications, 2nd edn., London, A.A.L., 1973, pp. 58-9.

comments on the Official Secrets Acts were question-begging, if not disingenuous: it claimed that the fact that the Attorney-General (who is, of course, a member of the government) must consent to prosecutions being brought, is an effective safeguard against prosecutions other than in matters 'of internal security or some other major interest'; and it made the surprising assertion that the concern of the Acts with 'unauthorised' disclosure had no bearing on the amount of 'authorised' disclosure. In reality, the boundary of one must logically be the boundary of the other; and the concept of 'implied authorisation' is itself highly ambiguous.<sup>20</sup>

The Conservative Government, elected in 1970, promised in its election manifesto to "eliminate unnecessary secrecy concerning the workings of the Government, and [to] review the workings of the Official Secrets Act." Meanwhile, a Section 2 prosecution had been instituted against four defendants, including the editor of the Sunday Telegraph, in connection with the publication of a confidential diplomatic assessment of the Nigerian civil war: summing up, the judge suggested that Section 2 should be 'pensioned off' and replaced by new provisions which would enable people like the defendants to determine in what circumstances the communication of official information would entail the risk of prosecution.<sup>21</sup>

On 20 April 1971, two months after the defendants had been acquitted, a Home Office departmental inquiry was set up, under the chairmanship of Lord Franks, to investigate the working of Section 2 of the 1911 Act: clearly it would have been improper to have held such an inquiry until the trial was over. Its report, accompanied by three volumes of evidence, amounting to 1,200 pages, appeared in September 1972.<sup>22</sup>

It found Section 2 to be a 'catch-all' in two senses: all categories of official information, however trivial, fall within its scope, and all employees in public service, from permanent secretaries to policemen and postmen<sup>28</sup> are potentially covered by it, as are private sector employees working on government contracts;<sup>24</sup> indeed, anyone knowingly receiving unauthorised information—if only a trifling piece of gossip about some minor occurrence during the tea break in a government typing pool—could in theory be

<sup>&</sup>lt;sup>20</sup>See Franks Report, loc. cit.. vol. 1, para. 18.

<sup>&</sup>lt;sup>21</sup>See an account by one of the defendants, Jonathan Aitken, *Officially Secret*, London, Weidenfeld and Nicolson, 1971.

<sup>22</sup> Loc. cit., note 11, above.

<sup>&</sup>lt;sup>28</sup>But the Acts do not normally apply to local government. For a useful outline of openness and secrecy in local government see Ronald Wraith, *Open Government: The British Interpretation*, London, Royal Institute of Public Administration, 1977, pp. 39-41. Wraith's monograph gives a useful overview of the field of open government and touches upon several aspects not covered in this paper.

<sup>&</sup>lt;sup>24</sup>Government security procedures also spill over into the private sector; see S.A. de Smith, *Constitutional and Administrative Law* (3rd edn.), Harmondsworth, Penguin Books, 1977, pp. 193-4.

prosecuted and imprisoned for up to two years. The report called Section 2 'a mess':

Its scope is enormously wide. Any law which impinges on the freedom of information in a democracy should be much more tightly drawn. A catchall provision is saved from absurdity in operation only by the sparing exercise of the Attorney General's discretion to prosecute. Yet the very width of this discretion, and the inevitably selective way in which it is exercised, give rise to considerable unease. The drafting and interpretation of the section are obscure. People are not sure what it means, or how it operates in practice, or what kinds of action involved real risk of prosecution under it.<sup>25</sup>

Its main recommendation was for Section 2 to be replaced by a new Official Information Act, covering specified categories of information: defence and internal security, foreign affairs, law and order, the affairs of private citizens and private organisations, cabinet papers, and currency and the reserves. The test of criminality would be whether unauthorised disclosure would cause at least serious injury to the interests of the nation. The mere receipt of information would cease to be an offence, though its further communication could, if the recipient *knowingly* received the information in contravention of the new Act, render him liable to prosecution; there would also be a new offence of communicating or using official information of any kind for private gain. These recommendations were accompanied by proposals for streamlining existing security classification practices.

The report was condemned by some for going too far, and by others for not going far enough. It was debated in the Commons on a 'take note' motion in June 1973. The following year brought a new Labour Government which promised, in its October 1974 election manifesto, "to replace the Official Secrets Act by a new measure to put the burden on public authorities to justify withholding information". This bold promise—which went far beyond Franks—was to haunt the government for the rest of its period in office.

The new Home Secretary, Mr. Roy Jenkins, was known to be an advocate of greater openness (though he came down firmly against a Freedom of Information Act on the United States pattern<sup>27</sup>); but it fell to his successor, Mr. Merlyn Rees, a former member of the Franks Committee, to announce, in November 1976, the government's intentions of implementing the Franks Report, with significant modifications;<sup>28</sup> the abandonment of fixed parity

<sup>&</sup>lt;sup>25</sup>Loc. cit., para 88.

<sup>&</sup>lt;sup>26</sup>H.C. Deb., 29 June 1973, cols. 1885-1973.

<sup>&</sup>lt;sup>27</sup>See his Granada Guildhall Lecture, "The Government, Broadcasting and the Press", 10 March 1975, in which he described the American legislation as "costly, cumbersome and legalistic".

<sup>&</sup>lt;sup>28</sup>H.C. Deb., 22 November 1976, cols. 1878-88.

for sterling made it unnecessary to include economic information among the protected categories; and there would be no blanket protection for cabinet documents irrespective of their content and security classification. A White Paper, along the same lines as Mr. Rees's statement, appeared in July 1978.<sup>29</sup> The government fell in March 1979. In its first Queen's Speech, the incoming Conservative Government promised "to replace Section 2 of the Official Secrets Act 1911 with provisions appropriate to the present time." A Protection of Official Information Bill, based upon a modification of the Franks recommendations, was introduced in the House of Lords in October 1979.

## THE LAW AND OPEN GOVERNMENT

The shortcomings of the Official Secrets Acts are also their greatest virtue in the eyes of advocates of open government. Section 2, in particular, is such a crude instrument that the prosecuting authorities hesitate to deploy it. In his 1976 statement, Mr. Rees suggested that the 'blunderbuss' of Section 2 was to be replaced by an 'Armalite rifle' in the form of a new Official Information Act; a backbench MP thereupon retorted that 'an Armalite rifle is a lethal instrument.'31

The Franks Committee felt that the suggestion of new laws to give the public a statutory right of access to official documents "raised important constitutional questions going beyond our terms of reference". The 1978 White Paper only touched upon the wider issue of open government, and suggested that reform of Section 2 was "a necessary preliminary to greater openness in government". The government went on to acknowledge the changing climate of expectations about official openness and to congratulate itself on progress already made. It alluded in particular to a circular letter sent on 6 July 1977 by the then Head of the Civil Service, Sir Douglas Allen, to all government departments, instructing them to proceed on the working assumption that "background material relating to policy studies and reports...will be published unless they decide it should not be". The White Paper admitted that, contrary to the government's 1974 manifesto promise, it had reached no conclusion about the desirability of imposing a statutory duty on governments to disclose information. All the signs were

<sup>&</sup>lt;sup>29</sup>Cmnd. 7285, July 1978. Another Commons debate on the Official Secrets Acts had taken place a month earlier: H.C. Deb., 15 June 1978, cols. 1255-1318.

<sup>&</sup>lt;sup>80</sup>H.C. Deb, 15 May 1979, col. 51.

<sup>81</sup> Loc. cit., col. 1887.

<sup>82</sup> Loc. cit., vol. 1, para. 85.

<sup>83</sup>Loc. cit., para 40.

<sup>&</sup>lt;sup>34</sup>The letter followed a Commons statement by the Prime Minister on 24 November 1976; the full text of the letter is at H.C. Deb., 26 January 1978, cols. (written answers) 691-4.

that if and when the government did reach such a conclusion it would be a negative one.

However, at the beginning of the 1978/79 parliamentary session, a Liberal MP, Mr. Clement Freud, won first place in the session ballot for Private Members' Bills, and used this advantageous position to promote his own allparty Official Information Bill, based upon proposals worked out by an independently financed organisation, the Outer Circle Policy Unit. The Bill had its second reading in Jantuary 1979 and was awaiting its report stage at the dissolution. On this occasion the frontbenches of the two main parties were united in insisting that any statutory right of access must be heavily qualified by ministerial powers of veto.

Although not enacted, the Bill's progress stung the government into producing its own tentative proposals, in the form of a Green Paper, Open Government, which appeared in March 1979.37 It stressed that any new rules must be compatible with existing constitutional conventions of governmental accountability to parliament and of collective ministerial responsibility (see below), and it suggested a non-statutory code of practice (as proposed by another independent body, JUSTICE38), which might be monitored by a new parliamentary select committee, and which would not be justiciable by the courts. The Green Paper alluded to practices in other countries, but urged caution in drawing comparisons; but at the same time the government also published a substantial digest of practices of open government in nine countries, 39 a document which should at least enable future debates to take place on a better informed footing than hitherto.

## INDIVIDUAL MINISTERIAL RESPONSIBILITY

The theory of openness in British central government rests on the convention that ministers are directly answerable to parliament for what goes on in their departments. Paradoxically, the same convention is also a cornerstone of secrecy and anonymity in the civil service.

Here, as elsewhere in British Government, practice is different from theory. Ministerial responsibility is blurred at its edges;<sup>40</sup> senior civil servants are in some cases directly accountable to parliament;<sup>41</sup> ministers often by-pass

<sup>&</sup>lt;sup>35</sup>Official Information Bill, July 1978. A number of other groups, including the Labour Party and the Liberal Party, produced proposals on the subject at about the same time.

<sup>&</sup>lt;sup>36</sup>H.C. Deb., 19 January 1979, cols. 2131-2213.

<sup>&</sup>lt;sup>37</sup>Cmnd. 7520, March 1979.

<sup>38</sup> Freedom of Information, London, 1978.

<sup>&</sup>lt;sup>39</sup>Disclosure of Official Information: A Report on Overseas Practice, HMSO, 1979.

<sup>&</sup>lt;sup>40</sup>The classic critique is S.E. Finer, "The Individual Responsibility of Ministers", *Public Administration*, Vol. 34, 1956, pp. 377-96. See also K.C. Wheare, *Maladministration and its Remedies*, London, Stevens, 1973, especially ch. 3.

<sup>&</sup>lt;sup>41</sup>e.g. the role of permanent secretaries, qua departmental accounting officers, in giving evidence to the Commons Public Accounts Committee.

parliament in their secret dealings with pressure groups and foreign governments. The realities of a dominant executive and of parliament's archaic procedures combine to undermine the effectiveness of ministerial responsibility as a vehicle for openness and accountability. Moreover, the vast scope of government activity and the complexity of bureaucratic organisation severely limit a minister's capacity to know about, still less to control, the full range of departmental activity for which he is in theory 'responsible'; remedial devices such as the appointment of temporary 'political advisers' can do no more than nibble at the edges of an intractable problem. Britain's membership of the EEC, which impinges upon the work of most departments, raises problems of control and accountability which merit a separate article, if not a book. 43

One recent case which highlights some of these problems arose out of the collapse of the vehicle and general motor insurance company in 1971.<sup>44</sup> A judicial tribunal of inquiry which looked into the government's apparent failure to avert the collapse, named and blamed senior civil servants in the 'giant' department of trade and industry, and expressly exonerated ministers; <sup>45</sup> it was made abundantly clear that ministerial 'control' over such a vast empire was pure fiction. This breach in civil service anonymity has potentially momentous constitutional implications though the fashion for such giant departments seems to have passed.

Departments have in general become somewhat more conscious of their relations with the outside world, and Sir Douglas Allen's letter (see above) reflects, and may accelerate this trend. Parliament has acquired new weapons to supplement the blunt instruments (such as question time) traditionally used to hold ministers to account. A Parliamentary Commissioner for Administration, with rights of access to officials and to departmental files, was appointed in 1967, to investigate complaints of maladministration in central departments referred to him by MPs; variants of the 'ombudsman' system have since been extended to the National Health Service and to local government. Since the late 1960s the House of Commons has expanded its network of investigatory select committees, many of which now sit in public and call civil servants and even ministers to give written and oral evidence. Following a report by the Commons Select Committee on

<sup>&</sup>lt;sup>42</sup>Tessa Blackstone, "Helping Ministers do a Better Job", New Society, 19 July 1979, pp. 131-2.

<sup>48</sup> Viz., The Hansard Society, The British People: Their Voice in Europe, London, Saxon House. 1977.

<sup>&</sup>lt;sup>44</sup>R.J.S. Baker, "The V and G Affair and Ministerial Responsibility", *Political Quarterly*, Vol. 43, 1972, pp. 340-5; R.A. Chapman, "The Vehicle and General Affair: Some Reflections for Public Administration in Britain", *Public Administration*, Vol. 51, 1973, pp. 273-90.
<sup>45</sup>Report of the Tribunal, H.L. 80, H.C. 133, 1971-72.

<sup>&</sup>lt;sup>48</sup>A recent account of developments in this area is F.A. Stacey, *Ombudsman Compared*, Oxford, Clarendon Press, 1978, chs. 7-9.

Procedure, 47 the Thatcher Government agreed, in July 1979, to the setting up of 12 new 'departmental' select committees, which absorbed many of the existing specialised committees. But committees still lack the range and the facilities to penetrate far into the secret places of government, and the system remains securely entrenched in traditional executive-dominated adversary politics.

Published as an appendix to the procedure committee report, is a memorandum of guidance for officials appearing before select committees.48 This states that: "The general principle to be followed is that it is the duty of officials to be as helpful as possible to Committees, and that any withholding of information should be limited to reservations that are necessary in the interests of good Government or to safeguard national security." However, the rest of the document spells out with revealing clarity the constraints to which civil service witnesses are subject; above all they are enjoined to "preserve the collective responsibility of Ministers and also the basis of confidence between Ministers and their advisers."

To sum up, for a variety of reasons the accountability of ministers is much more impressive in theory than it is in practice, and recent reforms have made only a marginal impact. Parliament has made its own small contribution to greater 'openness' by permitting the sound broadcasting of its own proceedings:49 but unless there is a constitutional transformation, most of the decisions that matter will continue to be made in secret arenas to which the elected custodians of the broad public interest have little access.

#### COLLECTIVE MINISTERIAL RESPONSIBILITY

While individual ministerial responsibility is directed in theory towards openness and accountability, collective responsibility plays a major part in cancelling out its effects. In constitutional theory, ministers stand and fall together: if a minister wishes to dissent publicly from agreed policy then he must resign. If this pretence of a united front is to have any credibility then the wrangling that preceeds the announcement of agreed policy must be concealed from view. This secrecy extends not merely to the substance of cabinet discussion but also to the cabinet's internal working, such as the membership and even the existence of cabinet committees. 50

<sup>50</sup>See note 9, above. The New Statesman, 10 November 1978, contains the text of a leaked memorandum by Mr Callaghan, which seeks to justify the continuance of absolute secrecy about cabinet committees; it is not a persuasive document.

<sup>47</sup>H.C. 588, 1977-78.

<sup>48</sup> Ibid., Appendix D.

<sup>49</sup>G. Drewry, "Parliament in Camera", New Law Journal, 29 May 1975, pp. 536-7. The campaign was a protracted one and, at the time of writing, television cameras are still not admitted. Both Houses now have Public Information Offices to answer inquiries, and publish Weekly Information Bulletins about their proceedings.

Once again, the reality is very different. For one thing, those who lose arguments in cabinet have a political interest in signalling to their supporters outside the government that they put up a good fight. A former Labour Cabinet minister argues that collective responsibility could not survive without the safety valve of the 'unattributable leak', via a network of accredited lobby correspondents; <sup>51</sup> thus we are able to read in our newspapers quite detailed accounts of cabinet deliberations, official versions of which will not normally, under rules imposed by the Public Records Acts, see the light of day for thirty years, and perhaps not even then. <sup>52</sup>

Two recent episodes have brought into sharper focus the relationship between collective responsibility and government secrecy. The first was the posthumous publication of Mr. Richard Crossman's, *The Diaries of a Cabinet Minister*, <sup>53</sup> containing a blow by blow account of cabinet government in the late 1960s, as well as revelations about Crossman's departmental life (including material about his dealings with named civil servants). The government tried unsuccessfully to persuade the publishers to make extensive cuts, and then brought a civil action for a permanent injunction, based on alleged breach of confidence; <sup>54</sup> the case was followed by an inquiry, which, *inter alia*, recommended that in general a fifteen year minimum time limit should apply to such ministerial publications. <sup>55</sup>

The second episode was the publication in the weekly journal, *New Society*, in June 1976, of an article about the government's change of policy with regard to child benefits, based upon extensive citation of a leaked cabinet document. The case gave rise to considerable debate in parliament.<sup>56</sup> No prosecution was brought against either the author (who refused to divulge

<sup>51</sup>Patrick Gordon Walker, *The Cabinet* (revised edn.), London, Collins, 1972, pp. 26-33. Giving evidence to the Franks Committee, *loc. cit*, Vol. 4, p. 187. Mr. Callaghan (then Shadow Foreign Secretary) said: 'You know the difference between leaking and briefing. Briefing is what I do and leaking is what you do.' On lobby correspondents, see Jeremy Tunstall, *The Westminster Lobby Correspondents*, London, Routledge and Kegan Paul, 1970.

<sup>52</sup>See note 10, above.

<sup>58</sup>In three volumes, London, Hamish Hamilton and Jonathan Cape, 1975, 1976 and 1977.

<sup>54</sup>[1976] Q.B. 752. See Hugo Young, *The Crossman Affair*, London, Hamish Hamilton and Jonathan Cape, 1976. The Lord Chief Justice held that the courts did possess power to issue injunctions to protect the public interest against breaches of confidence which posed a threat to collective Cabinet responsibility; but said that in view of the substantial time that had elapsed since the events described in volume one, publication would in this instance not threaten the collective responsibility of the present Cabinet. It is significant to note that not attempt was made in this case to invoke the Official Secrets Acts.

<sup>55</sup>Report of the (Radcliffe) Committee of Privy Councillors on Ministerial Memoirs, Cmnd. 6386, January 1976; its recommendations were accepted by the government. See pertinent comments by Street, op. cit., pp. 235-7 and by Wraith, op. cit., pp. 54-7.

<sup>56</sup>H.C. Deb., 17 June 1976, cols. 738-9; *ibid.*, 21 June 1976, cols. 1098-1102; *ibid.*, 28 June 1976, cols. 39-106; *ibid.*, 1 July 1976, cols. 650-8.

his sources) or the journal. An official inquiry was set up to examine the rules for handling cabinet documents.<sup>57</sup> In the last analysis, however, it is impossible to shield from all outside scrutiny the activities of a body whose members are engaged in the most abrasive political discussions (in which departmental interests are often at stake, as well as party political ones)—particularly where a system of 'unattributable leakage' is tacitly condoned.

## CONVENTIONS AND PRACTICES

Laws and constitutional conventions tell only part of the story of government secrecy in Britain. The rest is embedded in the political culture, and in codes, conventions and habits of political and bureaucratic practice. Thus the official Civil Service Pay and Conditions of Service Code (formerly ESTACODE) says that "the need for openness in the work of Government is now widely accepted", 58 but it goes on to stress that any participation by civil servants in public debate or any dissemination of official knowledge must be such as will neither prejudice national security; create the possibility of embarassment to the government in the conduct of its policies; nor bring into question the impartiality of the civil service. The memorandum for officials giving evidence before select committees (see above) is similar in tone. Such rules overlap with the Official Secrets Acts, but those Acts hardly impinge in practice upon the official's day to day working life. Breaches of rules of conduct may, in some cases, give rise to formal disciplinary proceedings. But there are more subtle modes of enforcement. We are back now in the 'inner circle' with its private codes of language, manners and conduct; a circle with members 'whose common kinship and culture separates them from outsiders' and where intangible 'units of esteem' carry subtle rewards for discretion and equally subtle penalties for indiscretion.<sup>59</sup> In the more down-to-earth language of the Franks Report, "a civil servant who is regarded as unreliable, or who tends to overstep the mark and to talk too freely, will not enjoy such a satisfactory career as colleagues with better judgment and greater discretion."60

Sir Douglas Allen's directive (see above) might signify a revaluation of the currency of esteem as applied to civil service openness, or perhaps it is mere windowdressing. Inevitably different departments will respond in

<sup>57</sup>Report of the (Houghton) Committee of Privy Councillors on Cabinet Document Security, Cmnd. 6677, November 1976.

<sup>58</sup>Paras. 4129-30. For discussion of the 'network of understandings and practices' governing civil service conduct, see Maurice Wright, 'The Professional Conduct of Civil Servants', *Public Administration*, Vol. 51, 1973, pp. 1-15.

<sup>59</sup>This vocabulary is borrowed from Hugh Heclo and Aaron Wildavsky, *The Private Government of Public Money*, London, Macmillan, 1974.

60 Loc. cit., para. 58. Paras. 59 and 60 proceed to outline the roles of civil service discipline and pre-entry vetting.

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different ways. A suggestion that the directive has partly a defensive purpose appears in one of its later paragraphs:

There are many who would have wanted the Government to go much further (on the lines of the formidably burdensome Freedom of Information Act in the USA). Our prospect of being able to avoid such an expensive development could well depend on whether we can show that the Prime Minister's statement had reality and results. 61

#### CONCLUSIONS

In concentrating upon a few landmarks in the disjointed debate about secrecy and openness in British Government, much has had to be omitted: vast areas like local government and the nationalised industries; the partial protection for journalists against the catch-all nature of the Official Secrets Acts provided by the 'D-notice' system; <sup>62</sup> the debate about public access to confidential administrative 'codes', such as the supplementary benefits A-Code; greater openness in town and country planning appeals, including publication of inquiry inspector's reports; recently modified rules of crown privilege in legal proceedings; the restrictive operation of rules of sub judice, contempt of court and contempt of parliament; the links between debate about 'open government' and more general movements to secure human rights; the impact of scandals in public life at home (notably the Poulson corruption case) and abroad (notably Watergate) in intensifying the call for more publicity and accountability.

This essay began with a warning against adopting a 'march of progress' view of open government; if the author seems to have ignored his own advice this is simply because his main concern has been to document as faithfully as possible a debate that has often reflected such a view. The ramifications of the issue are infinitely complex. Bureaucratic secrecy is not necessarily synonymous either with fear of exposure or with bloodymindedness. Each part of the debate needs to be set in its proper context; British official secrets are, in a world of international relationships and of extensive government involvement in the private lives of individual citizens, other people's secrets as well. The parameters of 'security' change with the ebb and flow of events: national and international terrorism, the conflict in Northern Ireland, the measures needed to safeguard nuclear fuels as the atomic energy programme expands.

<sup>61</sup>Lord Croham (formerly Sir Douglas Allen) has elaborated upon his views about open government in an article entitled, 'Is Nothing Secret ?', The Listener, 7 September 1978, written after his retirement. He suggests that some people have 'tended to read too much' into the 1977 directive.

<sup>62</sup>See Street, op. cit., pp. 227-31.

The multi-layered character of the subject is aptly summed up in two quotations. The first, by a British academic, reminds us of the gulf between the idealised goal of openness and the hard reality of practical democracy: "a good deal of government information is inaccessible, not because it lies beneath ground marked Keep Out, but because citizens lack spades." The second, by a distinguished scholar and journalist, writing at the begining of the century, sums up the glorious uncertainties of the British constitution in words which could have been designed to fit both the form and the substance of the debate about government secrecy: "We live under a system of tacit understandings. But the understandings themselves are not always understood." <sup>164</sup>

## Safeguarding Official Information

There has been considerable public interest in the scope for greater openness in government and, in particular, for the release of information which would allow more informed public debate on policy issues before decisions have been reached on them. It rests ultimately with ministers to settle how far the disclosure of information should be authorised; and this political decision is in no way inhibited by Section 2 of the Official Secrets Act, which is concerned only with sanctions against unauthorised disclosures of information. The sanctions are not necessary to prevent responsible civil servants behaving discreetly in safeguarding information which ministers wish to protect. This suggests that removal would not necessarily encourage more openness in government; but it could lead to more unauthorised disclosure for reasons ranging from political motives to personal gain.

—The Civil Service Department Memorandum, September 1971, The Franks Committee Report, (Volume II), 1972

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<sup>63</sup>Colin Seymour-Ure, "Great Britain", in Itzhak Galnoor (ed.), Government Secrecy in Democracies, New York University Press, 1977, pp. 157-75, at 175.
64Sidney Low, The Governance of England, London, T. Fisher Unwin, 1904, p. 12.

# Secrecy and the Law in India

## O.P. Motiwal

EGISLATIVE HISTORY of important countries of the world on official secrecy does not go beyond 100 years but we know that governments have been exercising the privilege of keeping certain facts and documents confidential and secret and their contents were not disclosed to the general public. This privilege had been enjoyed on the ground of national security. With the growth of democratic institutions, the concept of secrecy has also undergone a change. The grip of the government on secret documents is not so tight as it used to be. As people became conscious of their rights they demanded to know from the government the reasons and motives behind a governmental decision which affected their lives. They even asserted their rights to see and inspect the important documents of the government. Governments could not concede to place all the documents before the general public and exercised its right under a statute to keep certain types of documents secret. The question of production of confidential and secret documents and papers or revelation of their contents before parliament or a court of law has been a subject matter of controversy and has attracted the jurists, parliamentarians and academicians to discuss the various aspects of the problem specially in western countries. We will, for the present, confine our discussion to the provisions of the Indian Official Secrets Act.

## SECRECY LEGISLATION IN GENERAL

In India, earlier, we had no comprehensive legislation on official secrets. The only Indian law on the subject was The Indian Official Secrets Act 1889 as amended in 1904. In addition to this, the British rulers had made applicable to India an Act of British parliament, namely, The Official Secrets Act 1911. Later the British Parliament adopted another Act in 1920<sup>2</sup> which was, however, not applied to India.

The Official Secrets Act, as stated above, was enacted by the British parliament in 1911. Section 2 of the Act deals with the main offence which relates to unauthorised communication of official information including documents

<sup>&</sup>lt;sup>1</sup>George V., C. 28.

<sup>&</sup>lt;sup>2</sup>The Official Secrets Act, 1920 (10 & 11 Geo. V, C. 75)

by a crown servant. It includes all official documents and information. Section 1 is concerned with spying. The main offence created by Section 1 may be committed by any person who for a purpose prejudicial to the safety or interests of the state obtains or communicates any document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy. Section 2 covers a much wider range of information than Section 1. Section 7 of the Act makes it an offence for any person knowingly to harbour a person who has committed or is about to commit an offence under the Act. Section 8 makes it mandatory that any person for an offence under this Act can be prosecuted only by or with the consent of attorney-general. In the case of Scotland, the consent of the lord advocate is necessary.

The Canadian Official Secrets Act, 1939<sup>3</sup> is closely based on British Official Secrets Act. The wording of Section 4 of the Canadian statute is almost identical to that of Section 2 of the UK Act. Prosecution can be launched in Canada for an offence under this Act only with the consent of the attorney-general. The maximum term of imprisonment under British as well as Canadian statute is 14 years.

The French penal code protects two classes of information: first, information affecting national defence and, second, information entrusted to certain persons by reason of their profession. Articles 72 and 73 cover the delivery of secret information to a foreign power. This is a treason if done by a French citizen and espionage if done by a foreigner. The penalty in each case is death. If a person who is responsible for secret information by reason of his function or status discloses it to an unauthorised person or to a member of the public or reproduces or destroys it without intending treason or espionage, he is liable under Article 75 to imprisonment for 10-20 years or for 5-10 years only if the offence was due to imprudence or inattention to rules.

The law of Sweden contains detailed provisions governing: (i) public access to official documents, (ii) the secrecy of official documents, and (iii) the freedom of the press. The provisions relating to (i) and (iii) have been incorporated in the Swedish constitution. The Secrecy Act sets out in considerable detail the classes of documents which are to be kept secret and the period for which the secrecy is to apply. A Swedish public servant who discloses a document which is required to be kept secret is guilty of a breach of official duty and can be prosecuted. The normal punishment in such cases is fine but imprisonment and removal from office can also be imposed in serious circumstances.

The American constitution and the criminal code deals with the freedom of the press, access by the public to certain information and the unlawful communication of specified kinds of information. Section 552 (b) enumerates 9 exceptions to the rule requiring government agencies to publish details of

their organisation, procedure and policies for public use. In addition to this, in the US, there are a number of enactments designed to protect specified kinds of information. The enactment of the most general scope is known as the Espionage Act which is applicable to all persons. Unauthorised disclosure by US public servants which are not covered by the Espionage Act can be dealt with by disciplinary sanctions.

## THE INDIAN ACT

The Government of India in 1923 realised the difficulties and unsatisfactory state of affairs arising out of the simultaneous application of two sets of legislation in India. It was therefore decided to enact a law which was not only to be comprehensive but which should also incorporate the experience during World War II, specially in regard to the protection of military secrets. With this view the Official Secrets Act 19234 was enacted which was later on amended by the Central as well as State legislatures. In 1951, certain minor amendments were made by the parliament. Thereafter, for about 44 years, no amendments were effected. In 1967 the Union Government amended this Act with the view to widen the scope of Sections 3 and 5 of the Act. Secret official codes were brought within the ambit of the Act. In a prosecution for an offence of spying under Section 3 of the Act, it was necessary to prove that the accused acted for a purpose prejudicial to the safety or interests of the state. It has now been provided by this amending Act that it would not be necessary to prove that the accused had committed an act which was prejudicial to the safety or interest of the state, if from the circumstances of the case or the conduct of the accused or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the state. This statute enhanced the punishment also.

The word spying has not been defined in the Official Secrets Act but Section 3 has provided the penalties that can be inflicted to a person who is guilty of spying. This section specifies the instances which constitute the offence of spying. It, however, does not give a comprehensive list of the instances which are to be considered as spying. Under this section, if any person for any purpose prejudicial to the safety or interests of the state approaches, inspects, passes over and is in the vicinity of, or enters, any prohibited place, he is punishable for the offence of spying. The term 'prohibited place' has been defined in Section 2 (8) of the Act. It gives an elaborate list of places which are covered under this term. Another kind of spying which has been mentioned in Section 3(B) of the Act is that which makes drawing of any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly useful to an enemy. The

term 'enemy' includes any unfriendly state or a potential enemy. The third instance of spying in this section is where a person obtains, collects or records or publishes or communicates to another person, any secret official code or password or any sketch, plan, model, article or note of other documents or information which is calculated to be or might be or is intended to be, directly or indirectly useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty or integrity of India, the sovereignty of the state or friendly relations with foreign states.

If the offence of spying is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or airforce affairs of government or in relation to any secret official code, the guilty is punishable with imprisonment for a term of fourteen years. In other types of spying, punishment of only three years is to be given.

Sub-section 2 of Section 3 has clearly specified that the prosecuting agency, in cases of spying, need not prove that the act committed by the guilty was prejudicial to the safety or interests of the state. It will be sufficient if from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was prejudicial to the safety or interests of the state and the information obtained by the enemy was useful to him.<sup>6</sup>

If a person who is charged for spying has been in communication with, or attempted to communicate with a foreign agent within the country or outside India, it will be sufficient to prove that his act and conduct is prejudicial to the safety or interests of the state.

## ACTS PREJUDICIAL TO THE STATE

The term 'foreign agent' for the purposes of this Act means a person who has been employed by a foreign power either directly or indirectly for the purposes of committing an act prejudicial to the safety or interests of the state and a person shall be deemed to be in communication with a foreign agent if he has visited the address of a foreign agent or if the address of a foreign agent has been found in his possession.

The term 'official secret' has not been defined in the Act. The Bombay High Court in a case observed that the expression 'official secret' is ordinarily understood in the sense in which it is used in the Official Secrets Act and has reference to secrets of one or the other department of the government or the state. Budget papers are official secrets, until the budget is actually presented in the legislature. Contravention of maintenance of its secrecy would amount to an offence. The fact that on a subsequent date the budget proposals have



<sup>&</sup>lt;sup>5</sup>Kutubuddin Vs. State AIR 1967 Rajasthan 257-258=1967 Cr. L J 1700.

<sup>&</sup>lt;sup>6</sup>Section 4 of the Indian Official Secrets Act.

<sup>&</sup>lt;sup>7</sup>R.K. Karanjia Vs. Emperor, AIR 1946 BOM 322.



to be made public would not detract from the secrecy of these proposals till such time as they are announced in parliament. The Kerala High Court in another case held that budget papers are official secrets which cannot be published until the budget is actually presented in the legislature and the contravention of the same would amount to an offence under the Act.

The disclosure of the government departmental examination papers constitutes an offence under Official Secrets Act.

"Recently three high ranking Pakistani intelligence officials masquerading as diplomatic corps personnel posted at the Pakistan chancery here carried out dangerous espionage operations, securing through blackmail secret codified documents revealing IAF squadrons striking power.

"The codified documents secured by intercepting 'classified mail' revealed strategic locations of IAF squadrons, their striking power, allotment of MI-S helicopters and AN-12 aircraft, flight timings and senior officers' 'positions' at air force stations and in the Defence Ministry. The IAF man maintained till the end that he never knew that the three Pakistanis were Pakistani intelligence officers.

"He was sentenced to 10 years rigorous imprisonment early this month by the Additional Sessions Judge of Delhi Shri P.L. Singla under Sections 3 and 5 of the Official Secrets Act 1923 read with Section 120B of the Indian Penal Code." <sup>10</sup>

In August, 1978, an Indian army officer holding the rank of Lt.-Col. had been arrested on charges of having traded military secrets with a Pakistan agency across the actual line of control, according to official sources.

The officer, who headed the Indian military intelligence wing in Kashmir, has been accused of having prepared a 20-page document which was seized at a place in western Kashmir last month, the source said.

Described as highly classified, the document contained 'complete information' about the strategic and operational strength of the Indian army in the northern command.<sup>11</sup>

Section 5(1) of the Official Secrets Act is very comprehensive in its nature. It applies not merely to government servants but also to all persons who have obtained secrets in contravention of the Act. Regarding Section 5(4) of the Act and Section 4(1) of the Press (Emergency Powers) Act together, an invitation to the public contained in an article or advertisement in newspapers, to send official secrets to the editor of a newspaper for payment, comes within Section 4(F) of the Press Act as well as Section 5(1) of the Official Secrets Act. It is really an invitation encouraging and inciting any person to commit an offence.<sup>12</sup>



<sup>8</sup>Nandlal More Vs. State, 1965 (1) Cr. L.J. 393 at 408

State of Kerala Vs. K. Balakrishna, AIR 1961 Kerala: ILR 1960 Kerala 1088 to 1091.

<sup>&</sup>lt;sup>10</sup>Hindustan Times, September 30, 1979. <sup>11</sup>Hindustan Times, August 29, 1979.

<sup>&</sup>lt;sup>12</sup>R.K. Karanjia Vs. Emperor, AIR 1946 BOM 322 at 324=Cr. L.J. 744.

### NON-BAILABLE OFFENCE

Offence under Section 3 of the Official Secrets Act is not bailable while offence under Section 5 is bailable. In a case where an accused was charged for an offence under Section 3 while others were being prosecuted under Section 5 of the Act, a controversy arose whether the accused charged under Section 3 of the Act should also be granted bail because the other accused were being granted bail on the basis of their charge under Section 5 of the Act. The matter went upto the Supreme Court where the controversy was finally settled. 13 In this case, the accused was a former captain of the Indian army and at the time of arrest was employed in the delegation in India of a French company. He, along with two others, was prosecuted for conspiracy (S. 120B of the Penal Code) and also under Section 3 and 5 of the Indian Official Secrets Act, 1923. The case against the three persons was that they in conspiracy had passed official secrets to a foreign agency. The two other persons were allowed bail. On rejection by the sessions judge of his application for bail, the accused applied to the High Court under Section 498 of the Criminal Procedure Code. The High Court was of the view that at that stage the question was arguable whether the accused had committed an offence under Section 3 (non-bailable) or under Section 5 (bailable). Consequently the High Court took the view that as the other two persons prosecuted along with the accused had been released on bail, the accused should also be released, particularly as it appeared that the trial was likely to take a considerable time and the accused was not likely to abscond. The High Court, therefore, allowed bail to him as well. On an appeal by the state, the Supreme Court observed as follows:

- 1. That in dealing with the application for bail before it on the assumption that the offence might fall under Section 5, the High Court fell into an error, as it should have considered the matter, even if it did not consider offence was under Section 3 or Section 5, on the assumption that the case fell under Section 3 of the Act.
- 2. That the only reasons which the High Court gave for granting bail in this case were that the other two persons had been granted bail, that there was no likelihood of the accused absconding, he being well-connected, and that the trial was likely to take considerable time. These were, however, not the only considerations which should have weighed with the High Court if it had considered the matter as relating to a non-bailable offence under Section 3.
- 3. That among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence was the nature of the offence, and if the offence was of a kind in

- which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under Section 498 of the Code of Criminal Procedure.
- 4. That as the case against the accused was in relation to the military affairs of the government, and *prima facie* the accused if convicted would be liable up to fourteen years' imprisonment under Section 3, in such circumstances considering the nature of the offence, it was not a case where discretion, which undoubtedly vested in the Court under Section 498 of the Code of Criminal Procedure, should have been exercised in favour of the accused.

Later, the Rajasthan High Court went to the extent of observing that bail applications under the Act should be dealt with on the basis of assumption that the offence alleged against the accused is one under Section 3.14

The Official Secrets Act does not provide only for the punishment to an offender who has leaked out secrets to unauthorised persons but it also lays down provision to punish a person who harbours any spy. Section 10 of the Act says that if any person knowingly harbours any person whom he knows that he is about to commit or who has committed an offence under Section 3, knowingly permits to meet or assemble in any premises in his occupation or control any such person, he should be guilty of an offence. In fact, the section casts a duty on such a person to give on demand to a police officer any information in his power relating to such a person and if he fails to furnish any such information he shall be guilty of an offence under Section 10.

Scope of the Official Secrets Act 1923 is not confined to leakage of secret information or contents of confidential documents, etc., to unauthorised persons, but it extends to making of unauthorised use of uniforms, falsification of reports, forgery, impersonation, and false documents as an offence. In addition to this, it has been provided in this Act that no person in the vicinity of any prohibited place shall obstruct or interfere with any police officer or any member of the armed forces engaged in guard, sentry, patrol or similar duty in relation to prohibited place. If any one contravenes this provision he is liable to be imprisoned which may extend to three years or fine or with both.<sup>15</sup>

## JUDICIAL COMPETENCE TO TRY

Every court of law cannot try an accused who is alleged to have committed an offence under the Official Secrets Act. It has been prescribed that no court other than that of a magistrate of first class, specially empowered in this behalf by the appropriate government, which is inferior to that of a district

<sup>14</sup> Rutubbudin Vs. State; Air 1967 Raj 257 at 258 = 1967 Cr. L.J. 1700.

<sup>15</sup>Section 6 of the Official Secrets Act, 1923.

or presidency magistrate shall try an offence. 16 In terms of Section 13(2) it is not necessary that every case involving any offence under the Act is to be submitted by the magistrate to the sessions court by way of routine. In fact, the magistrate has to examine whether there is a prima facie case against the accused. If there is no prima facie case the accused is to be discharged. If in a particular case the accused is not interested for an enquiry by the magistrate, the latter may dispense with the inquiry and order for the committal of the case to sessions court.17 If the prosecution submits an application to the court trying the accused under this Act saying that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the state and all or any portion of the public should be excluded during any part of the hearing, the court may make an order to that effect. The Act, however, makes it obligatory on the court to pass the sentence in public. 18 The Supreme Court has observed that it would be noticed that while making a specific provision authorising the court to exclude all or any portion of the public from a trial Section 14 in terms recognises the existence of such inherent powers by its opening clause.19

It is possible that an offence under the Official Secrets Act may be committed by a company. In order to identify the person of such a company who is to be punished for the offence, it has been provided in the Act that the person who is in charge of and is responsible to the company for the conduct of the business of the firm is deemed to be guilty of the offence and such a person is liable to be proceeded against and punished accordingly. If the person as proceeded against proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such an offence, he will not be guilty of the offence.

If the offence has been committed by the company and is proved that the offence was committed with the consent or connivance or due to negligence of any director, manager, secretary or any other officer of the company, such an officer shall be deemed to be guilty of the offence and shall be liable to punishment under the law.<sup>20</sup>

The Official Secrets Act is applicable throughout the territory of India but the Jammu & Kashmir Government has promulgated the Enemy Agents Ordinance. Two Indians were found guilty of spying for Pakistan and were awarded rigorous imprisonment for a specified period in terms of this ordinance by a Jammu court recently. One of the accused was nabbed while he was trying to cross the border into Pakistan carrying documents contain-

<sup>16</sup>Section 13, op. cit.

<sup>&</sup>lt;sup>17</sup>R.S. Diwakar Vs. State; AIR 1950 AIR 325=1958 Cr. L.J. 585.

<sup>&</sup>lt;sup>18</sup>Section 14, op. cit.

<sup>&</sup>lt;sup>19</sup>Naresh Vs. State of Maharashtra, AIR 1967 SC. 1.

<sup>&</sup>lt;sup>20</sup>Section 15 of the Official Secrets Act.

ing information of strategic importance about Kashmir.21

After studying the important provisions of the Official Secrets Act the question now arises whether such an obstructive piece of legislation should be allowed to continue in our statute book specially in view of the democratic structure of the government of the country. As stated above, the public at large is always desirous to know the reasons behind administrative decisions which directly or indirectly affect their social life. Members of state legislatures and parliament as the representatives of the masses have tried to control the policies and activities of the government. They exercise such a control through their questions and debates in legislatures. MPs, MLAs and MLCs have been influencing the decisions of the government while functioning as members of various committees constituted by the government or a House of the legislature. As members of the committees they get an opportunity to know various secret matters which they might not have as public men. It is also possible that they may be able to know the contents of documents revelation of which would have amounted to an offence under the Act. All these facts create doubt regarding the desirability of continuance of such a statute. There have recently been several discussions in countries like USA and Canada which have raised this issue under various guises: administrative secrecy, the citizen's right to know, access to government files, freedom of information and so on. All these discussions arrive at the same conclusion, namely, greater and freer access to governmental information is desirable. In spite of such conclusions at various seminars attended by politicians, academicians and jurists no concrete step has been taken in these countries to loosen the grip of administration over the so-called secrecy being practised in the name of security of the state. In this connection I may discuss a case decided by the Canadian Federal Trial Court in the near past.22

The relevant facts in this case were that one Louise Joseph Rossi working as an inmate at the maximum security Archamalault Institution in Stc Anne des Plaines, Quebec, wanted his transfer to a medium security institution but this was refused on the ground that a number of warrants issued against him were outstanding. Rossi requested the authorities to allow him to see the concerned documents and files. He was not allowed because they were treated to be secret, and directive No. 2471(1) of the Canadian Penitentiary Service prohibited inspection of such documents. The court dismissed the petition saying that a writ of mandamus lies only to secure the performance of a public duty. It does not lie to compel performance of a mere moral duty. In the present case the concerned authority was not bound to show the files to the petitioner. Even if the government was bound to show the files, the writ could not be granted because it was a discretionary remedy and in the circumstances of the case the court was not inclined to accept the contention of the

<sup>&</sup>lt;sup>21</sup>Hindustan Times, September 30, 1979.

<sup>&</sup>lt;sup>22</sup>Rossi vs. The Queen; (1974) FC 531 (FCTD).

petitioner as he was aware of the warrants outstanding against him and the reasons for which they had been issued. In addition, he had been verbally informed about the nature of the warrants. Regarding the validity of directive No. 2471(1) the court held that there was nothing contrary to the Canadian Bill of Rights or any abuse of natural justice in the directive which had been issued under an Act. Contents of confidential papers could not be disclosed for security reasons.

This decision was a pointer to the authority, control and discretion exercised by administrative agencies in keeping certain documents secret and restraining the citizens from knowing their contents held to be vital for them. In spite of this decision and public opinion against it, the Government of Canada has not changed its attitude and has allowed the Official Secrets Act, 1939 to continue in force.\* The directives issued by the different government agencies are also in operation.

#### CONCLUSION

There is no doubt that the public should be actively associated in the process of decision-making by the government but at the same time it cannot have access to confidential or secret matters, the divulgence of which may not be in the interest of the country. Maintenance of secrecy covered under the Official Secrets Act seems to be necessary from the point of national security and safety. The view that in a democratic country statutes like the Official Secrets Act has no place cannot be supported on any ground. No country can afford to keep all its cards open at the risk of the nation's security. Democratic countries like Britain, USA and Canada still keep their statutes relating to official secrets alive. The offences and punishments provided in the Indian Official Secrets Act are almost similar to those of the British, Canadian and American statutes. As stated earlier, in these countries there has been a growing feeling as well as demand for making more and more government files available to the public so that government's wrong decisions could be exposed, but the Official Secrets Acts in these countries have not been repealed. I am of the opinion that our country should also continue to have the Official Secrets Act to protect the secrecy which is necessary for the safety and security of the country. The government should not, however, hesitate to place the facts which are not covered under the Official Secrets Act before the public to establish their impartiality, honesty and sincerity in administrative decisions.

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<sup>\*</sup>A liberalising Bill has been introduced in the House of Commons Since—Ed.

# The Modern State and Administrative Secrecy: A Case Study of India

## C.P. Bhambhri

IN RESPONSE to the growing challenges of modernisation, the states in industrialised countries have established a complex network of institutions for governance and conflict management. Max Weber had clearly observed the trend of governmentalisation and bureaucratisation of the advanced capitalist societies and he had stated that:

Under modern conditions, the only alternative to administration by officials who possess such knowledge is administration by dilettantes.<sup>1</sup>

Max Weber's scholarly insights inspired Morstein Marx, Dwight Waldo, Emmette Redford and Gunnar Myrdal to analyse the problems of 'administrative state' in the western countries. Redford observes:

Basically, the administrative state exists because there are shared needs that cannot be taken care of—either at all or in the scope and in ways that are considered satisfactory—without the continuing activity of public organizations. It expands because our numbers, our proximity, our expectations, our society's affluence, and our capabilities for personal realization through joint action to meet shared needs increase in the complicated, technological civilization in which we live.<sup>2</sup>

A rational and predictable human behaviour is possible if it is controlled and regulated. The administrative state performs the role of regulation of human behaviour by rational rules and code of conduct which are extremely comprehensive because the complexity of society demands it. The administrative state has raised problems of democratic control over administrators and a legitimacy of governmental interference in private lives of citizens; but the

<sup>1</sup>Reinhard Bendix, Max Weber: An Intellectual Portrait: New York, Doubleday of Company, Inc., 1962, p. 451.

<sup>2</sup>Emmette S. Redford, *Democracy in the Administrative State*, New York, Oxford University Press, 1969, pp. 179-80.

trend is towards more state regulation and not the minimal state.

The modern state in third world countries was established by the colonial rulers who needed a highly centralised and ruthless repressive machinery for exploitation. The colonial state was based on coercion, repression and secrecy; and supremacy of rulers was legitimised by terror and rule by persons. About the colonial state, Gunnar Myrdal observes:

From the colonial regimes... they have inherited much of the regimentation, red tape, and petty bureaucracy with which the metropolitan powers ruled foreign peoples of inferior status.<sup>3</sup>

India, like any other erstwhile colony, inherited a powerful system of governance from the British. In the post-independence phase of development, the inheritance was further strengthened to meet the challenges of modernisation and economic planning. The modern Indian state has revealed many contradictions because it has not been able to resolve the conflicts generated by its colonial legacies and the demands of a democratic and free society. A few specifics of the Indian state may be referred to in order to understand the role of administrative secrecy and its threat to democracy:

- (a) The colonial bureaucracy has left a great impact on the Indian administration because the colonial state was not smashed.
- (b) The demands of economic planning have led to a proliferation of administrative agencies and functionaries which have not been able to evolve a model of administration different from their colonial inheritance.
- (c) During the last thirty-two years, social conflicts have increased and the Indian state has strengthened its coercive apparatus to confront the challenges of emerging social classes.
- (d) Colonial legacy, proliferated bureaucracy and coercive instruments have to operate under democracy, legitimacy and popular control in India. The Indian state has been attempting to reconcile democratic legitimacy and coercion in dealing with the problems of development and social change.

The above mentioned specific features of the Indian state reveal the complexity of the problems. The major hypothesis of this paper is:

Administrative Complexity Helps Secrecy which is Misused After Attaining Democratic Legitimacy

A few pertinent questions could be raised in relation to the nature of

<sup>&</sup>lt;sup>3</sup>Gunnar Myrdal, Beyond The Welfare State: Economic Planning and Its International Implications, New Haven, Yale University Press, 1968 (6th ed.), p. 14.

complex states and administrative secrecy.

- 1. What is the relationship between administratively sensitive ministries/departments and secrecy?
- 2. How does administrative secrecy help corruption and lobbying?
- 3. Does administrative secrecy create hostility between the politician and the civil servant? Does administrative secrecy lead to a reversal of roles of policy makers and decision makers?

A discussion on the problems and nature of administrative secrecy in India should be conducted in the light of the specifics of the Indian state, and relationship established between administrative complexity and secrecy. Such a discussion would be around the ministries of External Affairs, Home Affairs and Defence. The three ministries between them maintain secrecy because they deal with complex administrative matters of paramount public importance. In the name of public security, law and order and safety of the country, these three ministries legitimise administrative secrecy. They reveal little to public scrutiny because, according to them, public interest demands secrecy. But if sensitive and important ministries are jealous of their administrative secrets, its consequences for democracy can be disturbing. Before we examine this further, it would be appropriate to spell out the main functions of the three ministries and relate them to the need for administrative secrecy felt by them. Then it will be seen that the walls of administrative secrecy built by these three ministries are likely to encourage lobbying, corruption and insularity from democratic control.

Role of the Ministries of Home, Defence and External Affairs in India

The prevalence of administrative secrecy in the three ministries is legitimised because they perform crucial and critical functions for the survival and security of the country. How can many aspects of treaties, agreements and understandings among various nations be exposed to public scrutiny? How can a country be defended against foreign invasions without secrecy? Preparations for defence of a country require secrecy and intelligence services. How can the whole administrative network of defence operate under public exposure? The openness in defence strategies helps the enemy, and secrecy is maintained both from the enemy and the citizens of the country.

The Ministry of Defence is concerned with national security, and it functions in close cooperation with the Ministries of Home and External Affairs. The expenditure on defence is 3 per cent of India's GNP, and P.V.R. Rao laments that the expenditure on defence fell from over 30 per cent of the Central budget in 1950-51 to 15 per cent in 1961-62.<sup>5</sup> After the Sino-Indian

<sup>&</sup>lt;sup>4</sup>See, P.V.R. Rao, *Defence Without Drift*, Bombay, Popular Prakashan, 1970.

<sup>&</sup>lt;sup>5</sup>Rao, op. cit., p. 5.

border dispute of 1962, the Government of India raised its budgetary grants for defence preparations, and the Indian public approved it enthusiastically.

TABLE I DEFENCE EXPENDITURE

Year	Total defence expenditure (Rs, crores)	Total expenditure of Govt. of India (Rs. crores)	Gross National Product (Rs. crores)	Defence expenditure as percentage of total Goyt. expenditure	Defence expenditure as percentage of gross national product
1964-65	80 <b>6</b>	2,603	21,113	31.0	3.8
1965-66	885	2,720	21,856	32.5	4.0
1966-67	909	3,217	25,250	28.3	3.6
1967-68	968	3,148	29,612	30.7	3.3
1968-69	1,033	3,140	30,293	32.9	3.4
1969-70	1,101	3,590	33,521	30.7	3.3
1970-71	1,199	4,120	36,654	29.1	3.3
1971-72	1,525	5,498	39,194	29.1	3.9
1972-73	1,652	498	43,159	30.0	3.8
1973-74	1,681	5,845	53,704	28.8	3.1
1974-75	2,112	74,423	63,203	28.5	3.8
1975-76	2,472	9,429	64,996	26.2	3.8
1976-77	2,563	10,291	69,047	24.89	3.7
1977-78(RE)	2,752	12,081	n.a.	22.8	n.a.
1978-79(BE)	2,945	13,679	n.a.	21.5	n.a.

RE: Revised estimates. BE: Budget estimates. n.a.: Not available.

Source: India, 1979, p. 36.

The result of increased expenditure on defence is that the Ministry of Defence has become a very complex and secretive organisation with a China wall around it.

The formal mechanism of defence policy for the country is based on the principle of pre-eminence of the political and democratic elements over the military perspective.<sup>6</sup>

The formal relationship of the politicians and the military generals does not give a true picture of the inner dynamics of the functioning of the Defence Ministry. A defeated nation was very critical of the Indian leadership in 1962, and the military generals escaped criticism by writing books in their defence.

<sup>&</sup>lt;sup>6</sup>See, A.L. Venkatesaran, *Defence Organisation in India: A Study of Major Developments in Organisation and Administration since Independence*, New Delhi, Publications Division, Government of India, 1967.

<sup>&</sup>lt;sup>7</sup>See: B.M. Kaul, *The Untold Story*, Bombay, Allied Publishers, 1967 and J.P. Dalvi, *Himalayan Blunder: The Curtain-raiser to the Sino-Indian War of* 1962; Bombay, Thacker, 1969.

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Because of secrecy in the functioning of the Defence Ministry, the blame for 1962 cannot be fixed, and a few implications of the nature of defence administration can be highlighted. They are:

- (a) Since defence of a country is a very sensitive area of public policy, its functioning is shrouded in mystery.
- (b) The Ministry of Defence operates under national and international lobbying in its day to day activities. The domestic public opinion must support growing defence expenditure in India, and the mass media has to be extensively used for favourable public support to defence policies and programmes of development. It is natural that lobbies for defence expenditure operate within and outside the parliament. Further, India has to buy a lot of sophisticated defence equipment in foreign markets which are subject to a lot of competition and pressure. Many technical and political considerations are involved before purchasing defence equipment. The powerful lobbies of military-industrial complex of the developed countries operate and compete in the third world, and India is no exception to this general rule. Many controversies have been raised in the public about defence purchase, and because of the secrecy of technical advice, many a time rumours have the field day.

A brief resume of the functions of the Home Ministry would reveal its central role in the governance of the country. The maintenance of peace and public tranquillity is the main function of the Ministry. For performing these functions, the Ministry is responsible for public services and police and paramilitary organisations of the Central Government. The Ministry overviews the State Governments and their administrative and police forces for the maintenance of law and order in the country.8

The Ministry has repeatedly acknowledged its coordinating functions with the State Governments, and its emphasis on the modernisation and streamlining of apparatus to maintain law and order. In its annual report (1969-70) the Ministry mentioned that:

The trend towards the growth of tension and violence in the country continued and the Ministry of Home Affairs was engaged not only in taking appropriate administrative measures in consultation, where necessary, with State Governments, but also in examining the socio-economic forces that lead to such tensions and violence.<sup>9</sup>

<sup>&</sup>lt;sup>8</sup>For details See: The Organisation of the Government of India, Delhi, Somaiya Publications Pvt. Ltd., 1971,; S.R. Maheshwari: State Governments in India, Delhi Macmillan, 1979; C.P. Bhambhri, Public Administration in India, Delhi, Vikas, 1974.

<sup>&</sup>lt;sup>9</sup>Annual Report 1969-70, Ministry of Home Affairs, Government of India, New Delhi, 1970, p. (i).

The annual report also maintained that:

'Several steps have been taken by the Ministry during the year towards the modernisation of police forces to enable them to cope with the problem of crime and public order in a changing society.<sup>10</sup>

The Ministry collects intelligence regarding 'subversive' activities, and maintains an efficient police force under its jurisdiction for law and order in the country.

Any deterioration in the law and order in the country evokes criticism of the Ministry, and it responds by spending huge resources on the police forces. The Ministry takes shelter behind secrecy, and immunises itself from public scrutiny, except of a peripheral nature, for performing its functions. Its annual reports to Parliament, its statements on the floor of the two houses of parliament, and its observations before a consultative committee of parliament are perfunctory and reveal very little about its actual functioning.

The Government of India's treatment of the naxalites has revealed that a lot of secrecy was maintained to perpetuate illegal repression on the citizens of India. In the name of public order and tranquillity, the Government escaped accountability because repression was conducted in secrecy.

The Ministry of External Affairs supplements the efforts of the Ministry of Defence for national security. The actual functioning of this Ministry has global dimensions, and it is subject to the norms of international protocol and behaviour. The External Affairs Ministry maintains its offices and

TABLE 2 EXPENDITURE ON MINISTRY OF EXTERNAL AFFAIRS

	(Rs lakhs)
	RF. 1977-78
Headquarters	569.34
Missions/posts abroad	2661.97
Supply wings	158.17
Other items	
Contribution to the U.N. Commonwealth Secretariat and	other
International Institutions	241.22
Central passport and emigration organisation	168.12
Other miscellaneous items	2231.36
Subsidies and Aid	
Subsidy to Bhutan	2466.00
Aid to Nepal	924.39
Aid to other developing countries in Asia & Africa	575.00
Aid to Bangladesh	263.10
Social security and welfare	54.49
	Total 10313 16

SOURCE: Annual Report, 1977-78, Ministry of External Affairs, New Delhi, p. 93.

10 Annual Report 1969-70, Ministry of Home Affairs, Government of India, New Delhi, 1970, p. iii.

representatives abroad and at home to deal with emerging situations in the fast changing world. Its expenditure reveals its important role in public administration in India (see Table).

The Ministry maintains secrecy because our national interests may demand it or other countries may be sensitive to certain aspects of inter-governmental relationships. National interests have to be promoted by the Ministry, and it becomes a safety value for secrecy. The spokesmen of the Ministry evade scrutiny because the national interests demand it. How could the Ministry disclose the implanting of nuclear device in India by the United States for surveillance activities on China?

## OPEN ADMINISTRATION SAFEGUARDS NATIONAL INTERESTS

Finally, an evaluation of administrative secrecy in the Government of India depends on its actual utility and not on professed reasons of the personnel managing different ministries of the government. The yardstick for evaluation of administrative secrecy employed by administrators has to be different from that of the citizen. Secrecy may defend an administrator from an unwanted public scrutiny, and it may promote his efficiency. For a citizen, administrative secrecy may breed corruption and arbitrariness. Hence in evaluation of the role of administrative secrecy, we are confronted with two distinct perspectives—of the administrator and the citizen. Can these two perspectives be reconciled? Why does a citizen refuse to believe as genuine that national interest demands secrecy? Why does a citizen want to penetrate into the technical aspects of a defence deal or a treaty with a friendly country? Is it mere suspicion between the decision-makers and citizens or is it more than a mere difference of perspectives? Administrative secrecy breeds rumours and ill-founded statements.

Not only this. A citizen feels cheated if unexpected actions of administrators are revealed after a lapse of many years. It has happened many a time that a lapse of time brought facts to public notice which were contrary to earlier stated public facts. With the growing complexity of modern states, the danger of administrative abuses is also increasing. Redford has highlighted the weakening of democratic controls over administration in the modern complex phase of human evolution. Galbraith refers to the emergence of the 'techno-structure'<sup>11</sup> in the modern state. This techno-structure reflects a wide distribution of influences on decision-making among many strategic centres in the organisation, and its consequence is that administrative secrecy is strengthened because of the technological complexity of decisions. What Redford and Galbraith are discussing is a prevalent feature of the highly complex societies of the west. India also is moving towards complex administration, and the experiences of the western societies have validity for us.

<sup>11</sup>John Kenneth Galbraith, *The New Industrial States*, Boston, Houghton Miffin Company, 1967, p. 71.

If administrative secrecy is becoming a formidable monster, a few prescriptions may be offered.

- (a) Administrative secrecy is an aspect of a total political system, and it should be tackled in a comprehensive manner. All efforts should be concentrated on making the Indian political system 'competitive' and 'open'. It is only in an 'open' political system that the ills of administrative secrecy can be tackled.
- (b) The Special Courts Act of 1979 is an innovation to bring to public light misuses of public authority with speed and efficiency. This institutional innovation, if used properly, would help the exposure of administrative wrongs which remain concealed due to administrative secrecy. Any exposure of administrative ills in India with the help of lokayuktas, special courts, and commissions of inquiry would act as a deterrence against misuse of power in secrecy.
- (c) The press is a very important source of information and investigation into the happenings in the secretariat. All efforts should be made to strengthen the freedom of the press in the country so that it can penetrate into the mysteries of administration.

## CONCLUSION

In India, the colonial legacy and people's expectations from government have made political system a critical factor in the survival of the country. The result is, a halo has been created around ministries and functionaries dealing with security and survival of the country. Its consequence is that vital decisions in public administration have assumed great secrecy. All criticisms are silenced by the ministers with a statement that the national interest does not permit a detailed discussion on public policy regarding defence, or law and order, or foreign affairs. This trend of ministries taking shelter behind national interest can prove dangerous for our democracy. Hence we should make the Indian political system 'open' to correct the evils of administrative secrecy which is integrally linked with complexities of the modern state. The modern state glorifies professionalism and technocracy in administrative decision-making, and the result is that significant public decisions are removed from public scrutiny. This is a dangerous trend, and it should be checked; and multiple institutions for scrutiny of public decisions should be created and strengthened. It is easy to create research and analysis wings or bureaus of investigation or intelligence agencies, but the problem is to contain them, and this is possible only if the political system is strengthened.

# Secrecy Needs in Police Administration

P.D. Sharma

NE OF the characteristics of a democratic government is its openness. The people evaluate the performance of such democratic governments on the basis of availability of information, which they gather from a free press, the opposition protests and public exposures made in the legislatures. However, this imperative of popular vigilance and parliamentary control over public policy through democratic debates has to be extended to some of those areas which are regarded as the conventional preserves of secrecy in administration. People seldom understand the subtleties implicit in the processes of goal-setting and goal-getting in the administration of public policy. In their enthusiasm for the former, they carry their conscious concern to the latter area of bureaucratic procedures, which the public servants wish to keep concealed from public gaze. The administration in a democratic polity has, therefore, to learn to live and reconcile itself with the contradictory pulls of popular pressures, unleashed in the name of 'public interest' and 'public accountability'. Actually, a very delicate balance between the 'needs of secrecy in public interest' and 'demands of openness of public accountability' to checkmate its abuse can be called the credo of democratic administration. Relatively speaking such an administration has to be much more open than its counterparts under other systems of government for the simple reason that its secrecy needs can be accepted only upto a point and that too in a given framework of institutional arrangements.

The totalitarian systems operate in the mystique of secrecy. Politics being exclusive and insulated in these systems, they follow the guarded path and consequently, the administration becomes a professional hideout of secrecy or confidential activities. These systems make no secret of the absence of popular participation and their committed model of bureaucracy can keep public administration loyal, efficient and secrecy oriented. Defections, desertations and sensational disclosures are severely punished and the strictest

<sup>&</sup>lt;sup>1</sup>For details see M. Albrow, *Bureaucracy*, 1970, and F.C. Mosher, *Democracy in Public Services*, 1968.

norms of secrecy are demanded and adhered to in public interest.<sup>2</sup> Even in democracies the security needs of the state and government presuppose a closed administration of defence services and the police. The administrative operations and organisations of security services cannot be democratised in the larger interests of the state, and if a society is essentially agrarian, its needs for secrecy in military and civil administrations are all the more greater.<sup>3</sup> The nature of the paramount goal, the consideration of the good of the citizens and an effective execution of the administrative decisions are often floated as the bases for secrecy in security administrations. It is a moot point whether the same considerations can be accepted as valid or partially tenable in the civil or non-security administration of the state.

#### SECRECY, A MANAGEMENT NEED

The term secrecy in its lexicon meaning, stands for things or facts unrevealed, hidden, secluded, kept undivulged or admitted to confidence.4 In common administrative parlance, it is a synonym for 'confidential'. Obviously, it does not imply suppression or distortion of facts for the mere heck of it. In administrative procedures, secrecy is to be resorted to for the attainment of a higher purpose. It is always a means to an end. When an organisation has to institutionalise secrecy through exclusive structures of confidential cells or intelligence wings to preserve absolute secrecy of procedure in announcing or arriving at certain decisions, it has a higher organisational purpose to achieve. 5 Secrecy of procedure or concealment of facts from a certain section of clientele or the people in general, temporarily or permanently, can be conceptualised as a 'management need' in all organisations, and especially in those which are large, complex and functionally prone to public dealings. Carl J. Friedrich believes that addiction to secrecy is one of the most characteristic benchmarks of modern bureaucracy. He argues that a certain amount of administrative secrecy is inbuilt in the administrative circumstances and hence falls within limits of legitimacy of means for the safeguarding of public interests. 6 Administrative interest in carrying secrecy beyond the limits of this general acceptability lies in a widely shared bureaucratic consensus, emanating

<sup>&</sup>lt;sup>2</sup>See D.A. Barnet, "Mechanism for Party Control in the Government Bureaucracy in China", pp. 423-25; Vogel Ezra, "Politicised Bureaucracy: Communist China"; Beck, "Party Control and Bureaucratisation in Czechoslovakia" and Armstrong, "The Soviet Bureaucratic Elite" in F.W. Riggs, Frontiers of Development Administration, 1970.

<sup>&</sup>lt;sup>8</sup>L.M. Singhvi, *Parliament and Administration*, Institute of Constitutional and Parliamentary Studies, Delhi, 1965.

<sup>&</sup>lt;sup>4</sup>Twentieth Century Dictionary, Chambers, New Mid-Century version, London, 1952, p. 999.

<sup>&</sup>lt;sup>5</sup>See E. Strauss, *The Ruling Servants*, London, George Allen and Unwin, 1960, pp. 37-49. <sup>6</sup>Carl J. Friedrich (ed.), Nomos V, *The Public Interest*, New York, Atherton Press, 1962.

from the following bases of secrecy:

Depersonalisation of Power

Administrative decisions are institutional and not personal.7 This fact of depersonalisation gives a quality of tentativity to administrative action. No administrator, howsoever efficient or competent, can offer assurances which may not be overridden later under the exigencies of a changed situation. This is a fact that renders practical administrators inhibitive, if not secretive. Most of them avoid saying too much prematurely, because they are genuinely not sure whether the end product of the administrative process will follow the predictable course. In personal matters the individual can effectively control the variables of his decision-making universe. He can counteract some of those facts, the publicity of which eyokes an adverse response. Similarly, in private matters, the commitment to personal values being high, the decision-maker usually likes to pay quite cheerfully for his open positions. This is often not the case in public affairs. The depersonalisation of power in public bureaucracies provides a source of interest in secrecy and public bureaucrats in large organisations tend to avoid open positions on issues, which, ultimately, get clinched in the light of inevitables and imponderables.

# Administrative Feasibility

Administrative feasibility as a universal administrative concern can be identified as another source of interest in secrecy in administration. "Though a premise of all administrative decisions in administration, feasibility is often not an acceptable reason for action to publics, intensely interested in policy. Consequently, there is a strong tendency to conceal this basis of action. The organisation must present an idealised version of itself even though the bases of its action cannot always be idealistic.',8 In simple words, administration is a rational quest and a continuous endeavour for feasibility of public policy, which, by its very nature, has to be somewhat doctrainnaire. The people who opt or vote for such idealistic public policies do not want to listen to administrative handicaps that threaten to sabotage them. Naturally, when administrative feasibility is a decisive constraint in the realm of public policy, its open publicity may embarrass the policy makers. To avoid this embarrassment or popular reaction against administrative handicaps, administrators tend to conceal the reason or basis of action, which in their judgement is a valid fact, but people are liable to call it a non-issue. To put it differently, administrative secrecy is a condition conducive for the formulation and

<sup>&</sup>lt;sup>7</sup>See M. Crozier, *The Bureaucratic Phenomenon*, Chicago, University of Chicago Press, 1964, and also R.P. Taub, *Bureaucracy Under Stress*, 1969, pp. 192-203.

<sup>&</sup>lt;sup>8</sup>Victor A. Thompson, "Bureaucracy in a Democratic Society", in *Public Administration and Democracy*, Roscoe C. Martin. (ed.) 1965, New York, Syracuse University Press, pp. 222.

execution of public policy, which otherwise may be too utopian to be hazarded in practice.

## Camouflaging of Power Conflicts in Hierarchy

All organisations have their internal political struggles for power and hidden conflicts of positions in the hierarchy. People in democratic societies expect their public bureaucracies to be a tool of popular interests. They do not accept independent administrative interests of their public servants as legitimate and tend to ignore the fact that even the most rational variables of administrative process have their irrational political overtones about them. People in general regard personal appropriation of power and position as contrary to rational administrative norms of action. This being immoral, the taint of personal (or sub-group) interest, usually to be found somewhere in all administrative action, need to be carefully concealed. It is a truism to contend that people are unfamiliar with the realities of administrative universe and camouflaging of political struggles and internal rivalries alone can lend credibility to the system.9 The bureaucrats never wish to wash their dirty linen in public, because once their personal interests and individual guarrels are exposed to public eye, they cease to be public servants in popular estimation. Naturally, their image and role as servants of the people in a democracy needs to be protected with the shield of administrative secrecy, which, besides being handy, can preserve this Weberian model of the ideal type. 10 which people generally cherish and defend.

# The Cementing Force

Thompson argues that, "the actual independence from hierarchical controls, and the control power of lateral interests do not square with the dominant owner-tool doctrine and therefore have to be camouflaged. An elaborate dramaturgy is used to hide these necessary departures from the dominant stereotype." Like internal power struggles of the hierarchy the

<sup>9</sup>Victor A. Thompson, "Bureaucracy in a Democratic Society", op. cit., p. 223.

10Carl Friedrich in his Some Observations on Weber's Analysis of Bureaucracy maintains that "only an army, a business concern without any sort of employee or labour participation in management, a totalitarian party and its bureaucratic administration, would come nearest to the Weberian model of Bureaucracy." (in Political and Administrative Development, Braibanti and Durhaum (ed.), Duke, 1969, p. 107-35).

Merton further adds that "While theoretically the government personnel are held to be servants of the people, in fact they are usually super ordinate." *Reader in Bureaucracy* by Merton, Glencoe, Illinois, Free Press, 1952, pp. 221-32. One of the recent bureaucracy studies attempted by Pai Panandikar and Khir Sagar maintains that "the structural and behavioural characteristics of bureaucracy are only moderately related." Panandikar and Khirsagar, "Bureaucracy in India: An Empirical Study" *Indian Journal of Public Administration*, Vol. XVII, No. 2, New Delhi, IIPA, 1971, pp. 187-208.

<sup>11</sup>Victor A. Thompson, Bureaucracy in a Democratic Society, op. cit., p. 223.

deviations caused by lateral interests and other autonomous centres have to be concealed from public discussions. If people tend to feel that hierarchical controls are a mere facade and the dominant stereotypes do not exist, the myth of administrative rationality will be shattered. Here secrecy provides the necessary cementing force and people are made to believe that what they actually do not know, does not exist as well. The gap between administrative norms and administrative behaviours is, in fact, actuated by idealistic prescriptions, and the realistic constraints in administration and administrative secrecy represent a mechanism by which these constraints can be concealed without damaging the professions of rational idealism that cements the organisation.

Thus, the concept of secrecy in administration can be envisaged as 'rationalisation of the irrational' which the irrational wants to see as the rational. Whether it is depersonalisation of power, or concern for feasibility. or the need of camouflaging internal conflicts and norm deviations, bureaucracy does not like itself to be presented in an un-Weberian cloak of illegitimacy. The mystique of secrecy is chosen as a necessary evil or a lesser evil for practical reasons, or for reasons of human compassion, or to discharge the obligations of primary relationships not yet fully articulated with the administrative obligations of a complex democratic society. 12 In less developed countries, this conflict of norms creates an anomic situation, in which individual officers can appropriate considerable personal power through fluctuating norms of bureaucratic expediency. Much of this power of public officials in such "clerical, desk class bureaucracies of agrarian societies is derived from their monopoly of knowledge about complex government procedures and requirements."13 The 'professional expertise' of bureaucrats, to which Max Weber referred, was expertise in such procedures and requirements. Preparation for bureaucratic careers in the training academies of these countries is still a study of these procedures, neatly outlined in law books. The desk class officialdom is interested in both complexity and secrecy, which can be termed as the main source of the citizen's dependence upon administration and hence the main source of officialdom's power.14

An industrial society breeds a professionalised bureaucracy. Unlike its counterparts in developing countries the industrial citizenry is intensely interested in administrative actions and the bases for them. It constantly fights bureaucratic secrecy and attempts to hold it within tolerable limits by means of interest organisations, legislative committees, and a free press. The people there generally do not accept departures from rational norms of official conduct and consequently the bureaucrat has to hide and distort his irrational behaviour beyond recognition through elaborate rationalisations

<sup>&</sup>lt;sup>12</sup>Kahn and Boulding, *Power and Conflict in Organization*, New York, Basic Books, 1964.

<sup>13</sup> Thompson, op. cit., p. 223.

<sup>14</sup> Ibid.

and semantic confusions.<sup>15</sup> In the less developed societies, there is no less secrecy than in the professionalised bureaucracy of the developed world, but its bases are certainly less pernicious. A conceptual attempt to discover the bases of professional secrecy beyond the sources of secrecy can yield two justifications of secrecy in administration:

- (a) An overriding consideration and concern of public good or good of the client, howsoever mistaken the notion may be.
- (b) A tactical unwillingness on the part of the bureaucratic system to make efforts to translate the technical bases of its public actions into layman's language.

In democratic socities, both these considerations are supplementary as well as contradictory. People must know what is public good, but public actions leading to public good cannot be spelled out in a palatable language of the layman. An average administrator, marking his papers 'confidential' or 'top secret' may be habit bound or blissfully ignorant of the rationality of his action, but he does believe that secrecy about certain facts is helpful in achieving the stated objective. High level theorising apart, secrecy in administration of public policy in a democracy is required because:

- 1. it protects the politico-administrative process of policy administration from pernicious pressures, avoidable distortions and threatened sabotage at vital points;
- 2. it provides an administrative ethos conducive for a calm, objective and systemic culling of facts and their purposive evaluation for purposes of policy formulation, policy evaluation and policy revisions;
- 3. it is an effective tool for efficient, timely and purposeful implementation of public policy, which has to be planned, phased and coordinated at every step.

Thus, even in civilian administration, it is indisputable that administrative decisions and operations are to be kept secret till the opportune moment arrives. But then, the critical question is what is to be concealed from whom? How much secrecy, at what point of time, and in what manner, is desirable and compatible with the demands of democracy? The level of popular awareness of the society, the critical nature of the job and the extent of articulation available in the administration of a given polity, can perhaps partly answer these questions and evolve workable solutions.

<sup>&</sup>lt;sup>15</sup>R.K. Merton, "Bureaucratic Structure and Personality" in R.K. Merton (ed.), *Reader in Bureaucracy*, Glencoe, Illinois, The Free Press, 1952, pp. 361-377.

<sup>&</sup>lt;sup>16</sup>Paul H. Appleby, *Policy and Administration*, University of Alabama Press, Alabama, 1949.

### THE POLICE AND SECRECY

Police administration is an integral part of the national security administration. For professional purposes internal security of a nation can be distinguished from its external security, but functionally the tasks of the policy and that of the military overlap and remain mutually inclusive. The army has a support structure in police and the police continues to be a coercive structure of power to provide free time to the army to concentrate on matters vital to national survival. Conventionally, there are three major functions or the police organisation in a civilised society. They are:

- 1. Implementation of the law or laws of the land.
- 2. Maintenance of public order or peace in society.
- 3. Preservation of internal security, involving individuals, governments, systems and nations.

Obviously, the concepts of order and security, which represent the higher levels of manifestation of law, expect the police organisation to implement all laws ungrudgingly, rigorously and objectively. The area of internal security being fairly wide and critical, takes in its fold the total system, which the police organisation seeks to protect, preserve and defend. First, there are individuals whose personal safety is called the VIP security of the police system. Then, there is the government of the day, which has to be protected against seditious activities and violent overthrow by subversive groups, national as well as international in their network. In addition to the government, there is always a political system, sustained by the laws of the land and which, in turn, shapes the other sub-systems of economy, culture and social intercourse. The police has a duty to protect all these individuals, groups, sub-systems and governments through the instrumentality of legitimate coercion. Of course, the territorial integrity of a nation in the present international system of nation states is ultimately protected by its defence forces, but the police organisation also has to organise systematic intelligence and comprehensive vigilance to make its contribution to national survival.

Every state and society has a wide variety of violators of law and saboteurs of public peace in its national confines. They may be individual criminals, professional politicians, violent minority groups or perverse gangs of brigands, who may operate openly or clandestinely in defiance of law and may jeopardise the security of individuals, government, institutions and the state. The professional tasks, confronted in organising security measures against all such groups or individuals need specialised skills and policemen have to remember the following principles of security administration<sup>17</sup> when they

<sup>17</sup>Background papers of National Internal Security Seminar organised by Internal Security Academy, C.R.P.F., Mt. Abu, from 4th to 8th December 1978 and from 19th to 24th March 1979 (Unpublished).

are face to face with the violators of law and saboteurs of peace.

- Strategy is a better part of police valour and physical coercion is not a mere muscle activity of the warrior. Naturally, most of the police action during emergent situations of disorder cannot be open to popular scrutiny.<sup>18</sup>
- 2. The political aspects of criminal intelligence, VIP safety and national security involve serious risks and physical hazards. Secrecy is a worthwhile insurance against these imminent risks, where a minor lapse by disclosure may cause a major debacle.<sup>19</sup>
- 3. Police action, unlike the army, has to be taken in the midst of political operations and in the thickest heat of social interaction. Naturally, there are countervailing pressures against which the implementation of law needs to be protected. Secrecy of administrative procedures provides the requisite shield under which law may take its own course, without much fear and undue favour.

The police administration represents the executive arm of the state. It wields crude power and has to deal with situations which involve cruder power. Its operations have to be time-bound and have to exhaust the procedures established by law. Unlike administration of development projects its writ cannot wait nor can it afford postponement of decisions, when the chips are down. It has a job and it must be performed whatever be the cost. The professional nature of the police job devolves very special kinds of administrative and functional roles on the police organisation and it has to work out its own tools, strategies, confrontations and preventions.<sup>20</sup> There are unique situations in police work which can neither be simulated nor anticipated. Similarly, there are opportunities, which once lost, may spell havoc and cannot be retrieved by spending more money or even by investing better competence. Unlike other civil organisations, the police organisation has a strictly rigid hierarchy and perhaps cruder varieties of power struggles and pressure politics, which need to be camouflaged in the garb of departmental secrecy. The entire organisation has to put up one united front in the face of crime, violent disorder or national sabotage. This overriding purpose permits the police organisation to keep its cards packed in its opaque house and it looks defendable if police planning and police manoeuvres are

<sup>&</sup>lt;sup>18</sup>Background Papers of 6th Internal Security Seminar *op. cit.*, especially on Nav Nirman Agitation in Gujarat, pp. 13-25 J.P.'s Movement, pp. 27-32, *Insurgency*, North East India, pp. 127-54.

<sup>&</sup>lt;sup>19</sup>Background Papers of 6th I.S. Seminar, op. cit., especially Sections on Arms and Explosives, pp. 157-85 and Terrorism, pp. 229-56.

<sup>&</sup>lt;sup>20</sup>S.S. Vaidyanathan, "Scope for Personal Discretion in Law Enforcement", in *Police at Cross Roads*, S.V.P. National Police Academy, Hyderabad, 1977 (mimeo.), pp. 80-91.

inaccessibly concealed from all those on whom it has to crackdown once a while with a blitzking.

The weightier argument for secrecy of police operations is the argument of administrative feasibility and imponderability of fluid variables in the field situations. A police officer has to keep his fingers crossed, till the final outcome of the scene is announced to the people. Like theatres of war, the scenes of police operations have to be planned, masterminded, processed and directed on the basis of prior information collected by the intelligence branch, the crime branch and the CID units of the organisation. The secrecy needs caused by the de-personalisation of power in police work are greater and are more pronounced than in the other departments of the government.<sup>21</sup>

Moreover, a dutiful policeman has to handle explosive situations of violence. Day to day combats, confrontations, and laying of traps are the basic tactics in policing a society. The policeman in all these situations may be endowed with legitimate power, but he can always be overwhelmed by the superior power of the irate mob and the perverse whims of the criminal at large. With limited resources, scarce manpower and absence of popular cooperation, the police organisation has to administer raids, launch crusades and smash dens of vice, all of which require lot of confidential information, secret planning and surprise action.<sup>22</sup> Without absolute secrecy of information circuits and confidentiality of administrative operations, the plans may go awry and cost heavily in men and money. Police officials know at their own peril that premature leakage of information or other clues not only foil their plans but can encourage the outlaws to continue in their lives of crime and vice. Further, it demoralises the cops and its chain effect may cause an incalculable damage to the police organisation and its clients. Moreover, the police are not supposed to have a dharmayuddh with the criminals. The latter may outwit the former and bring their actions to a sorry pass, if the policemen are not efficient enough to know about their profiles, modus operandi and objectives. Similarly, by being secretive the police can organise effective preventive networks and contain the adverse effect of law-breaking to the minimum.23 This professional need of secrecy for job accomplishment in police organisation is so great and so obvious that it has been institutionalised in the creation of CID, IB, CB, ACD and several other allied agencies at all levels.

Secrecy needs in police work follow different patterns under different forms of governments. They vary functionally and also as per the nature and scope

<sup>&</sup>lt;sup>21</sup>T. Anantachari, "Democracy and Social Defence", in *Police at Cross Roads, op. cit.*, pp. 64-69.

<sup>&</sup>lt;sup>22</sup>See Proceedings of 4th Internal Security Seminar at I.S.A., Mt. Abu (20th Aug. to 2nd September 1978) especially Sections pertaining to sporadic disturbances, pp. 11-15, arms and explosive from the angle of internal security, pp. 27-31, espionage and counter espionage, pp. 15-21 and insurgency and counter insurgency, pp. 31-43.

<sup>23</sup>Ibid.

of the police agency. Actually, the job of law enforcement expects different kinds of laws to be enforced in different degrees of severity and priority. The order of these priorities of secrecy in police work can be seen in an ascending scale in the following areas of law enforcement.

Social Legislation: Although there is a visible trend to demand greater police attention in the implementation of social laws like the Civil Rights Act, Anti-dowry Act, the prohibition laws, the Immoral Traffic Act, etc., yet the consensus is that they are non-police tasks and the police has been giving them the lowest priority. Consequently, there is little intelligence available and preventive actions are not effective in the absence of institutionalised secrecy in the department. Recognition of need for social and economic intelligence in police work is a very recent phenomenon and unless it is done police performance and police achievements in the area of social legislation will be far from satisfactory.<sup>24</sup>

Conventional Crime: Police work in this area is a quasi-judicial work.<sup>25</sup> With the prevailing winds of social change and new developments in crime techniques the criminal is in an advantageous position unless secretively encountered by the police. Not only this the crime gangs are becoming increasingly articulate and their area of operations has expanded beyond the seas. Then the demands of the system of rule of law envisage that everybody is to be regarded as innocent unless proved guilty. The net result is that prosecution in courts cannot be sustained unless there is indisputable evidence collected from varied, secret and inaccessible sources. The secrecy organisations of the police are going to play an increasingly more articulate and decisive role in police investigations, legal prosecutions, court trials and bringing the guilty to book. Even in organising preventive measures, secrecy is a help and can be used as an effective deterrent in the commission of traditional crime and conventional vice, rural and urban.

Public Order: The needs of secrecy in this field are more paramount than in the areas of social legislation and conventional crime. It is a very volatile area, and police actions based on mere hunch, can sensitise it beyond proportions. Besides, involving crowd psychology, mob violence and emergency hazards it directly borders on the citizen's most sacrosanct right to

<sup>24</sup>Second Interim Report of the Rajasthan Police Study Team, Government of Rajasthan, Jaipur, 1979, p. 6 (unpublished).

<sup>25</sup>Elaborating this point further, Mr. G.C. Singhvi writes, "Investigation of cases is part of the judicial process and the police must be entirely independent in the discharge of functions, which are judicial or quasi-judicial.... It is of fundamental importance that Justice should not only be done, but should manifestly and undoubtedly be seen to be done. It is in keeping with this doctrine that the judiciary has been separated from the executive. It is time, therefore, that the judicial function, comprising investigation and prosecution, is also separated from the police and the home departments, which are under the executive, and are placed under some authority, which may be independent of the executive." G.C. Singhvi, "To Whom Should the Police be Responsible", *Indian Journal of Public Administration*, Vol. XXIV, No. 1, January-March 1978, p. 119.

freedom, including the freedom to assemble without arms and to protest peacefully against the unwanted policies of the government of the day. Here, the police job is to strike a delicate balance between social peace and demo cratic freedom, tending to subordinate the latter to the former, in cases of genuine emergency. Secrecy in police management is a condition precedent for purposive police action. Original, timely and valid police intelligence received from secret agencies can save misuse of police by political masters and abuse of police power by the police itself. Thus, paradoxically, secrecy in police work enhances the freedom of the individual and protects police misuse or abuse against unscrupulousness.

National Security: Like the work of defence forces the police work in the strengthening of national security has to give top priority to secrecy for goal accomplishment. Secret intelligence, routine vigilance, defence preparedness and quiet action are some of the basic police functions accepted as legitimate for national security. The police has to be extra-ordinarily efficient and effective in doing this job and can, in no case, be allowed to take a chance or hazard a guess. Technically, efficiency in this area is another name for perfect secrecy and it is absolutely compatible with the demands of democracy. The secrecy needs of internal security administration, howsoever democratic, are a necessary evil for the working of democracy, developing or developed.

Thus, from social legislation to national security, the need for secrecy in police work keeps ascending. The hierarchy of police goals determine the quality and extent of secret services in police work. It is also no exaggeration to contend that the standards of police performance generally obtain in proportion to the high quality of service rendered by the secret services of the police organisation. Not only this, even the non-secret services of the police stations and line agencies should follow a secret path to enhance the administrative feasibility of their actions, directed towards stated goals. The control of vice, crime and disorder in a society is like an open chessboard where the players have to conceal their respective strategies from each other and also from the viewers, but the viewers have every right to applaud or condemn, if the game is won by skill or lost by default.

Secrecy per se is neither good nor bad in any administration. All administrations need it, but the administration of law enforcement needs it much more than others, because of its critical nature and professional requirements. So long as it hightens the goals of the police organisation, it has to be accepted as 'legitimate' and must not be violated through so-called democratic disclosures. But then, any abuse by the police in contravention to the democratic freedoms of the citizens is likely to result in the perversion of its secrecy preserves also. Here secrecy does not mean opaqueness and a democratic system should battle the abuse of secrecy through public exposure of its institutional devises. National security apart, secrecy in police work has to be

<sup>26</sup> Final Report of the Rajasthan Police Study Team, op. cit., pp. 80-83.

reconciled with the basic civil liberties of the citizens. Several kinds of legislative, quasi-judicial and non-official institutions should be created and encouraged to evolve a system of limited exposures and counter checks to avoid the likely misuse of legitimate secrecy, permissible in professional police work. It is essentially a matter of institution building, wherein the conventional growth plays a significant part. Firmness in law enforcement is a part of the democratic game and democratic openness should not necessarily weaken it. The limits of legitimate secrecy can be publicly delimited by making them conventionally congruent with the democratic openness of the system. It is a truism to contend that secrecy in police work has potentialities of being abused, but let this also be understood that an absolutely open police system is the end of all policing.

# Use of Secret Intelligence

In order for the knowledge obtained by espionage to be used, it must pass through a very elaborate process of analysis and through many offices. The probability of being mislaid or passed over in the heavy flow of material is certainly not negligible. Then when it reaches the person who can utilize it he is faced with the question as to whether it can be trusted. Spies are not esteemed by their superiors and they are often the victims of 'plants' of false information. On many occasions the uncertainty as to whether the data reported by a spy are true, false or planted, results in inaction. Finally, intelligence staffs, even if they arrive at firm conclusions, must contend with the operational side, and just as spies are not esteemed by their masters, the intelligence is not always esteemed by politicians and the military men who are outside the intelligence services. The chances of utilization of the information diminishes at every stage.

—EDWARD A. SHILS, The Torment of Secrecy, 1956.

# **Over-Secrecy in Reporting Communal Incidents**

S.C. Misra\*

THE NEED for observance of secrecy in certain spheres of public administration is indisputable and is rather an essential requisite. Its necessity has been recognised from the earliest times. Arthashastra lays great stress on the inevitability of the king keeping himself fully informed, not only about the state of law and order, the needs and morale of his subjects, but also of the activities of disloyal and recalcitrant elements amongst them who might endanger the security of the kingdom.¹ Thus Chanakya elaborated a scheme of complicated spy-system which covered almost all sections of the society and permeated every sphere of the administrative activity. Obviously, state secrets pertaining to the essential administrative wings like the military, industry, trade and political affairs were all required to be closely guarded, for compulsions of self-preservation and to obviate any advantage that the enemy might derive through neglect, in a pre-emptive move.

#### SECRECY: THE RATIONALE

These very principles have given birth to modern concepts of secret police and other intelligence agencies in security organisations. Espionage which is aimed at collecting secret information about the affairs of other countries, and counter-espionage which amounts to counteracting the espionage system of other countries, are now internationally recognised and accepted as essential features of a country's administrative system. Any country failing to fall in line with this concept runs a great risk of jeoparding the interest of its citizens. In fact, any lapse in this regard, exposes the administration to the charge of neglect of grave and serious proportions.

International diplomacy is no longer an open affair. Most embassies have in their staff undercover secret agents, both for espionage and counterespionage purposes. Espionage, in modern times, has been raised to the level of a fine art and has been given a certain amount of respectability. Spy stories sell like hot cakes and there are numerous instances on record of spy

<sup>\*</sup> The author is thankful to Dr. P.D. Sharma, Reader in the Department of Political Science, Raiasthan University, Jaipur, for his valuable guidance and help.

<sup>&</sup>lt;sup>1</sup>Kautilya, Arthashastra,

activities bringing down many administrations, during wars as well as in peace time, through coup and counter-coups. In this connection, the two most powerful secret service organisations working for the USA and USSR, viz., CIA and KGB, are now common knowledge and their exploits and significance need no elaboration. In such an atmosphere of international intrigue, there can be no letting up in emphasis on secrecy. All political systems, including that of India, for this reason, require a constitutional oath of secrecy to be taken by the President, the council of ministers, judges of the High Courts and the Supreme Court, and all other important functionaries. The bureaucrats and other categories of government servants, who are likely to be called upon to handle classified material are bound by the Official Secrets Act, the violation of which makes them liable for drastic punishments.

### IMPROPER APPLICATION

However, this concept of secrecy in administration when overstressed, can be counter productive, specially in a free and democratic society like ours. People are entitled to access of certain kinds of information in which they are interested. Otherwise also, in an elective system of representative democracy, there should be a continuous dialogue and exchange of information between the people and the government on matters of vital public interest. There can be no controversy that utmost secrecy is required to be observed and it should be obligatory to do so, in matters of vital national importance, like the strength, armament and location of our armed forces, essential statistics and situation of key industrial installations, specially those affecting the defence of the country, schemes and policies to combat insurgency and other sensitively political and international matters.<sup>2</sup> These are only illustrative and there may be many more in this category, the leakage about which may be detrimental to national interest or promotion of cordial international relations. These must remain closely guarded secrets for obvious reasons and due stress needs to be given on their preservation.

Experience, however, shows that this caution for maintenance of secrecy is often overexercised and that too in an unintelligent manner. Very frequently it extends to completely innocuous fields. This increases work for various agencies handling them, for all documents concerning them have to be properly documented, filed and handled by higher category of personnel. The sheer abundance of classified material dilutes the importance of the more important ones among them and facilitates leakages. The correspondence between the Central Intelligence Bureau and the State Intelligence Agencies is a classical example of this thoughtlessness. It has become routine for

<sup>&</sup>lt;sup>2</sup>See proceedings of 3rd (3rd to 8th July, 78) and 6th (19th to 24th March, 1979), Internal Security Seminars, organised by Internal Security Academy, Mount Abu.

every letter, even a routine communication, to be placed in a double cover, sealed, registered and insured, and then marked to the highest officer by name for his personal handling. Obviously it is an enormous waste of his precious time and involves a colossal misuse of government funds which are perpetually scarce in a developing society like India.

#### OVER-SECRECY ABOUT COMMUNAL TENSIONS

The phobia for secrecy is carried thoughtlessly even into the fields of law and order, particularly when communal incidents cause tensions. While reporting about communal incidents or large-scale disturbances, there is an obnoxious tendency to hide the truth and camouflage the incidents in a way that no body is able to know the reality. The idea perhaps is to cover up administrative deficiencies and keep an escape route open in case of public or official criticism. The facts and inferences drawn from the reports, can then be denied later, if necessary, and convenient interpretations given to the wordings of the reports. It is little realised that such manoeuvres at hiding the truth from the public are not at all necessary and are positively harmful for the long term credibility of the administration. They create avoidable misgivings in the public mind and give rise to all kinds of speculations.

### **SPECULATIONS**

After all, a democracy is a government through public dialogue on matters of public interest. These democratic debates can be meaningful and purposively effective only when people have access to correct facts and have a free atmosphere to verify and evaluate these facts in the light of their empirical experiences. Vague, multi-meaning and misleading reports about the facts of communal riots generate ill-informed debates and lead people to draw disastrous conclusions about an unfortunate situation, which need to be averted by intelligent understanding and political courage to face facts.

Press reports and the news contained in the All India Radio bulletins are mostly based on the official hand-outs and briefings on such occasions. During the period of the disturbance due to curfew restrictions and communal feelings running high, it is too dangerous for the press and the AIR reporters to move about and to collect information. They have per force of circumstances to depend on official information. Even otherwise, restrictions are very often placed on them only to publish the official versions. During the course of time, administrative officers have developed a universally accepted fine technique of shrouding real facts in a verbiage of coined jargons which are not capable of any clear interpretation. The efficiency of a district officer is often judged by the finesse with which he can accomplish this feat and get away with it. No body seems to bother about the public reaction to such reports. The citizen never comes to know the real facts about the origin of

the trouble, the people involved in it, and the damage caused to public and private property. In a democracy this can hardly be termed as a fair dealing with the public who are entitled to know all the details of an incident which is of concern to them. This attitude my have had a relevance during the rule of the aliens, when it was in their interest to gag the public and the press to keep the flag flying.

Over secrecy in reporting about communal riots in those days was an imperative of the situation. Besides, bringing a bad name to the government, which prided in strict maintenance of law and order, correct statistics about communal carriage was regarded as a sad commentary on the efficiency of the police force, especially in the face of the universally accepted charge that communal riots were engineered by the British rulers for political reasons to keep the populace divided.

This way of dealing with the public now in a free society can only be termed as mere lack of responsiveness to the people and to some extent deliberate dishonesty with the citizen.<sup>3</sup>

One is told repeatedly, almost day in and day out about a clash occurring between two groups of people, resulting in deaths, arson and looting of property. Citizens are told that a twenty four hour curfew was clamped and varying contingents of CRP and BSF rushed to the trouble spot. The nature of the trouble or the complexions of the warring groups are deliberately suppressed. One invariably guesses that it was a communal trouble, for otherwise there would be no need to conceal the identity of the people involved. This starts a chain of pessimistic thoughts; the average Muslim thinks that Hindus must have been the aggressors while his Hindu neighbour thinks otherwise. From the fact that a twenty four hour curfew had to be clamped and special para-military forces had to be rushed, there is left little doubt in the mind of the average person that loss of lives and property must have been colossal to demand such a drastic action. They cannot be blamed for imagining that the trouble must be widespread, and those having relatives or friends in the town of trouble or neighbouring areas to feel extremely concerned about their welfare. In this confusion, it is natural for all kinds of rumours to spread, which find easy credibility in the absence of any reliable official version. This unbriddled speculation and spread of rumours (which are the creation of the administration itself) due to their over-anxiety for secrecy, have often led to escalation of the trouble and tension even in farflung areas. Hindu-Muslim relations, conditioned by historical factors, are such that even a far-fetched rumour is enough to kindle a passion for revenge in the two communities.

#### UNPURPOSIVE SECRECY

The intention of the administration in maintaining this unnecessary secreev, is very unclear. It hardly serves any public purpose or helps to ease the situation. It would be quite understandable, if the administration completely refused the dissemination of the news till the situation was fully controlled. But when it is publicised that a clash had taken place and stringent administrative measures had been taken, the army had been alerted and hundreds of people had been put under arrest, houses searched and arms and ammunition recovered, what does the administration gain by suppressing the fact that the groups clashing belonged to the two rival communities of Hindus and Muslims. After all, the motive behind hiding the genesis of the trouble, the identity of the trouble makers, the communities of the dead and the injured and those who were found in possession of arms and explosive material, has to have some rationality behind it and should serve a public purpose. To continue with the system merely on the plea that it has been a continuing administrative practice, reflects lack of imagination and distrust of the people. Because of this official attitude today very few people have faith in government bulletins on such and many other occasions. It is a general belief that administrators minimise loss of life and property. The people, therefore, generally multiply the official figures by two or three to draw their own inferences. To think that people would be shocked by announcement of true facts is to overlook the reality of the social system. By now people have become accustomed and conditioned, so far as communal riots, civil disturbances or natural calamities are concerned. They have been hearing about them for years and the news does not make much dent on them. But they are certainly interested in the trend of communal politics, its causes and cures, and about the welfare of their friends and relatives in particular.

This ingenuity in reporting is by no means a post-independence phenomenon. It has come down from the British days. The only difference is that it is no longer relevant in the present set-up. As a young Superintendent of Police, I can recall, having been pulled up sternly for my plain and direct reporting of facts about a communal incident.<sup>4</sup> A Dushehra procession, while passing in front of a mosque, was stoned and attacked, resulting in serious communal rioting in a major town of my district. As required by the rules, I sent a telegram to my senior officers under the following contents:

Dushehra procession attacked by Muslims while passing in front of Rohalla Mosque. Police fired thirty rounds buck-shot. Situation under control. Detailed report follows.

<sup>&</sup>lt;sup>4</sup>The incident relates to the importing of a communal riot in the town of MAU in district Azamgarh, U.P., in the year 1939.

To my dismay and utter surprise I was accused of being a partisan. I was condemned of being prejudiced, the implication being that a Hindu officer could not call Muslims as aggressors. Though later I learnt to couch my reports in ambiguity, I am not convinced till today whether any sane person could conclude that Hindus themselves would have thrown stones on their own procession and attacked it with lathis from inside a Muslim mosque. The situation has not changed much in secular India. The police officials in centres of communal trouble cannot afford to be honest even with a government which professes to be secular in its official behaviour. The art of couching reports about communal incidents by officials in charge of law and order has more serious repercussions today than it had in those days when public services prided in administrative efficiency and professional commitment. Our reporting or under-reporting about facts, fictitious or genuine takes a heavy toll of the morale of public services, and the administrators once trained into it, carry it to other realms of administrative activity to pursue their own ends.

#### SECRECY AND RUMOUR MONGERING

Judicial enquiries into communal riots have time and again emphasised the havoc caused by wild rumours which invariably went uncontradicted from official quarters. This again shows reluctance of authorities to come out with true facts. Perhaps, they have come to realise that a time has now come, when even if they did contradict a false rumour, their version would not be believed. A vicious cycle has really overtaken the administration. In this connection, it would be relevant to make a mention of the observations made by Justice D.P. Madon.<sup>5</sup> While recommending pre-sensorship of news relating to communal disturbances to prevent coloured and exaggerated versions getting into the press and the issue of news bulletins by the authorities themselves, Justice Madon drew pointed attention to the practice of distortion of facts in the official hand-outs to the press. He observed, "The bulletin should however not be such as to defeat its own object by giving rise to speculations and circulation of wild rumours. The news given by the authorities should be factual, objective and not crouched in vague terms." <sup>6</sup>

The argument that news of communal incidents have adverse repercussions for us internationally, has also lost validity with the passage of time. Experience shows that Pakistan and even other countries of the world get news of these incidents sometimes even before we can do so. Moreover, due to obsession with over-secrecy in reporting of communal incidents in the

<sup>&</sup>lt;sup>5</sup>Report of One Man Commission of Inquiry, set up by the Maharashtra Government on 12th May, 1970, consisting of Justice D.P. Madon, Judge High Court, Bombay, to report on the communal disturbances in Bhiwandi, Jalgaon and Mahad.

<sup>6</sup>Ibid.

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Indian administration, people place more reliance on BBC broadcasts or news relayed by Pakistan.

The discrepency, being obvious and glaring, erodes the credibility of the news media and the government of the day which takes its people to be gullible. Moreover, it is tentamount to dis-service to the country where stark facts are accessible to all the citizens of the country and people of the world through an internationally competitive system of information and mass communication. This is taking secrecy too far and attempts to be over secretive in the name of public interest prove self-defeating and leave the people enraged and vulnerable to provocative rumours. A democratic government must share its anxieties and concerns with the people and should take them into confidence by feeding facts. Reporting about communal incidents by the administration is an area wherein the outdated practice of over-secrecy by the Police and Home departments should be replaced by an enlightened and rational system of honest and correct reporting.

## Protecting Law and Order

It is central to the continuation of our way of life that law and order should be preserved. There is a legitimate and desirable public interest in information relating to the organisation and conduct of the police, the courts and the prisons, but there can be no legitimate interest in information which, for example, would help directly in the commission of a crime. Nevertheless the Government is concerned that, when the definition of this category comes to be drafted for the Bill, it should be so framed that there can be no doubt that the criminal sanction applies only when there are strong reasons, as set out above, for preserving confidentiality.

White Paper on Official Secrets Act 1911, HMSO, 1978.

# Administrative Secrecy Vs. Openness in UK\*

# S.C. Vajpeyi

THE POWER structure today is much different from what it was in the 19th century or earlier. In those days, the government concerned itself with the maintenance of law and order, with defence and foreign affairs. It left industries to the manufacturers, merchants and traders and welfare to charitable organisations. It did no planning. The philosophy of the time was laissez-faire. In the present century, the government has concerned itself with every aspect of life and consequently we have the concept of the welfare state. As a result, the governors exercise unfettered discretion for the common good. They regulate housing, employment, planning, social security and a number of other activities. The philosophy of the day is socialism or collectivism. But whatever the philosophy or system of government, there is always a danger to ordinary man. It lies in the fact that all power is liable to misuse or abuse and the greater the coverage of the activities of the state, the more the power and, therefore, the consequent increase in the possibility of its misuse or abuse. The great problem, therefore, before the courts, the media and ultimately the public—the masters—has been how to cope with the abuse or misuse of such power. Thirty years ago, Lord Denning in his book 'Freedom Under the Law' had outlined this challenge in these words:

Our procedure for securing our personal freedom is efficient, but our procedure for preventing the abuse of power is not. Just as pick and shovel is no longer suitable for the winning of the coal, so also the procedure of mandamus and certiorari and actions on the case are not suitable for winning of the freedom in the new age. We have in our time to deal with changes which are of equal constitutional significance to those which took place 300 years ago.

What Lord Denning then said about 'winning of the freedom' also fully applies to the methods available to the people to exercise a check or restraint on the activities of the state and to make it more accountable.

\*Based on 'The Crossman Diaries', Vols. I(1975), II(1976) and III(1977), 'The Crossman Affair', Hugo Young (1976), and the UK Government White (1978) and Green (1979) Papers.

Indeed, the government machine has now become so large and its internal systems of communication are so limited that without serious discussion in the press of these matters, there would often be inadequate knowledge, or inadequate distribution of knowledge inside the government machine itself.<sup>1</sup>

Strict enforcement of the cult of secrecy, if carried to the extreme, would seem to require censorship of public discussion of issues or a complete quarantine between journalists, ministers and civil servants resulting in the inability of journalists to bring their background knowledge and experience into play when writing about the issues of the day.<sup>2</sup> Information is necessary to determine whether the government is protecting public interest. It may as well be doing so without this being known. Access to such information is the life blood of democracy; and if it does not flow, democracy withers.<sup>3</sup>

From the earliest times, governments of all types have been understandably anxious to preserve secrecy in respect of matters affecting the safety or security of the state or about matters touching the relations of one state with another, or affairs relating to maintenance of law and order within the state. As coverage of the activities by the state increased, so did the desire of the government for secrecy and for according its activities protection against unnecessary publicity or exposure. The conflict between the maintenance of secrecy and the diffusion of information in regard to the functioning of the governments has been increasing in recent years, because of the widening scope of the umbrella of such activities affecting all affairs of the citizen, more particularly his economic life, advances of science having both peace time and military implications and collection of more information regarding individuals about their daily life through computers and other methods necessitating safeguarding of the citizen's confidence. Governments have been worried about the disclosure of official information of all types—not necessarily about matters relating to defence or national security—long before the law regulating official secrets came into being. To take an example from UK, early in 1873, after a series of cases involving the use of official information, the Permanent Secretary of State wrote "the unauthorised use of official information is the worst fault a civil servant can commit. It is on the same footing as cowardice by a soldier. It is unprofessional."4

There is near unanimity that matters affecting the defence or security of

<sup>1</sup>William Rees Mogg (editor of *The Times*) in his evidence in Crossman Case before Lord Chief Justice, Lord Widgery on July 22, 1975 (hereainafter referred to as Crossman Case)

<sup>2</sup>Peter Jenkins (author of *Battle of Downing Street*, 1970, London) in his evidence in Crossman Case.

<sup>3</sup>Ralph Nader, Freedom of Information, Clearing House, Charles Peters & Michael Neltson (1979), Holt, Routledge & Wintour, p. 251.

<sup>4</sup>Report of Departmental Committee on Section 2 of the Official Secrets Act, headed by Lord Frank, Vol. I, p. 120 (CMND 5104) (in 4 volumes)

the state, or affecting the foreign relations or the conduct of foreign relations, or any proposals, negotiations, decisions connected with the value of currency or relating to the reserves should be covered by law and breaches of the law should be punishable. It is also generally agreed that certain information regarding individuals or associations or companies entrusted or made available to the government on confidential basis should be similarly safeguarded. It is in regard to the functions of the government covering other areas and the processes of decision-making that differences arise about the question of maintenance of an attitude of openness or secrecy.

It would be appropriate to notice at this stage the observations of the Fulton Committee<sup>5</sup> in regard to administrative secrecy in UK. It says:

We think that the administrative process is surrounded by too much secrecy. The public interest will be better served if there were a greater amount of openness.

The report recognised that "there must always be an element of secrecy" not simply on grounds of national security in administration and policy-making, and suggested the setting up of an inquiry to make recommendations for getting rid of unnecessary secrecy in UK. The government of UK published a White Paper in June, 1969 on the subject entitled 'Information and Public Interest' suggesting a review. The Conservative Party manifesto at the 1970 general elections promised to eliminate unnecessary secrecy concerning the workings of the government and review all the operations of the Official Secrets Act, 1911. The Franks Committee was appointed in 1971 as a result of these recommendations. This Committee submitted its report which was published in 1972. The proceedings and recommendations of this Committee produced a national debate. Protection of Official Information Bill was introduced in April 19797 to implement, with modifications and additions, the recommendations of the Franks Committee.

#### NEW POWER CENTRES

It is now recognised that one of the most serious weaknesses in British democracy today is that the enormous expansion in the range of governmental activities has swamped the critical resources of parliament as well as those of the press. While power and decision-making have moved from Westminster to Whitehall and from Whitehall to various regional councils or quasigovernment bodies, the political journalists remain largely centred on a parliament that is no longer effective enough to secure the information it

<sup>&</sup>lt;sup>5</sup>Fulton Report on the Civil Service (VI 1968), pp 91-92, CMND, 3638 HMSO.

White Paper 'Information and Public Interest' (1969).

<sup>&</sup>lt;sup>7</sup>Protection of Official Information Bill, 1979 25th October 1979 (50438) HMSO.

needs to form a proper judgement of the issues to decide on. For similar reasons, the twin doctrines of anonymity of civil servants on the one side and the ministerial responsibility on the other are being eroded. Ministerial responsibility is still an accepted doctrine in the political world and in schools, but it bears increasingly less relationship in practice to what the general public thinks and believes. Most people think that parliament is unable to protect them against the arbitrary actions of the vast governmental machinery and they are encouraged in their belief by statements of an increasing number of backbench members of parliament.8 This fiction of ministerial responsibility, however, enables members of parliament to demand information in regard to any activity falling within the purview of the department for which the minister is responsible. Ministerial responsibility is no longer adequate as a device for securing an administration accountable to society, first, because the continuous growth in the bulk of business increases the 'fictitious' element in the responsibility and, second, because the time span of the major decisions on government operations is lengthening—the Concorde airlines project is a good example where almost a decade elapsed between the start of negotiations and decision. Responsibility of a minister becomes more dispersed sometimes too diffused and distributed to stick and wherever it is likely to stick the minister could, by refusing to give information or by giving it in such a clever way as not to give crucial information, while appearing to give it (for which parliamentary answers are so famous), cover up his department's mistakes. A remedy is now provided by the Parliamentary Commissioner for Administration, who makes independent investigations under statutory powers and is able to unveil what happens behind the ministerial screen.

The convention of anonymity also, as Fulton says, is being eroded. The reason is that the civil servant now comes in contact with so many members of the public. Typically, a civil servant comes into contact not with the public but with a public—a section of the public who have an interest in common. Officials of the education department deal with leaders of teachers' unions and likewise. These numerous and continuous contacts constitute further inroads on the conventional anonymity. The administration also qualitatively suffers from the convention that only the minister should explain issues in public, on the assumption that he knows and controls all the operations of the department—an assumption no longer tenable. Once the specialised public knows the civil servant by name, it will soon get to know his ideas and views which he will feed into the policy-making process. As a result, attempts are made to pierce the curtain of anonymity of the individual member of the service from whom advice to ministers on crucial matters is said to have originated. A good example of the new wave is Samuel Brittain's

<sup>&</sup>lt;sup>8</sup>M. Beloff, "Defining the Limits of Official Responsibility", The Times, Sept. 11, 1967—quoted in Henry Parris—Constitutional Bureaucracy, 1969.

<sup>9</sup>Fulton Report on the Civil Service, op. cit., p. 93.

'The Treasury Under the Tories'. He argues that the two extreme views about senior civil servants that either they are pliant mind-readers executing policies in which they have had no say or that they urge single course of action on minister after minister, are equally untrue. The truth lies in between.<sup>19</sup> Anonymity is not a condition of permanence. A civil servant may have to resign if his views on major questions or party affiliation become known. It is accepted that officers of armed forces should sometimes resign if their recommendations are not accepted by the minister. This gives service chiefs a power to persuade the minister, which their counterparts do not possess. Hence a reduction in anonymity might increase the influence of the civil servants as well as import valuable clues and information to make administration more accountable to society.

Neither anonymity nor ministerial responsibility should, however, be made a fetish of. They are meaningless except as ways of making administration more accountable to society. The vast growth of the role of the state and the consequent power of the bureaucratic machinery render it increasingly necessary for the public to have available to them in detail the process by which important decisions are arrived at various levels. More openness not only exposes errors at an earlier stage, but it ensures a system where errors are less likely to occur. There is a whole area of public concern that the local government can legitimately reveal to the public and which the central government does not do. Publication of the reports of inspectors in the Ministry of Housing and Local Government in UK, initially resisted in 1958, serves as a good example. Secreey is an obstacle to good policy-making when it prevents the gathering of sufficiently wide range of opinion and advice and when it narrows public discussion of policy issues. It is further argued that secrecy should not inhibit the release of information or the stimulation of discussion and work in the earlier stages of planning and policy-making. The danger is that secrecy, for whatever reason it starts, becomes a habit. It becomes an excuse for preventing others from looking over your shoulder and a way of avoiding trouble and escaping post mortems.<sup>11</sup> Secrecy may sometimes allow greater efficiency, but not necessarily greater wisdom. Extremes to which it can be carried can be illustrated by the famous cases of Lady Gardneers at Hampton Court being covered by the Official Secrets Act, or the refusal of supply of information regarding the number of trees grown in the Greenwich Park of London to the editor of South East London Mercury or the refusal of the place of storage or refusal of cases to a Daily Mail reporter in 1964 when there was a typhoid epidemic in Aberdeen in UK or its use to prevent public ventilation of staffing matters or departmental defects, malpractices or improprieties.

As Jo Grimond, MP said in his affidavit before Lord Widgery in the

<sup>11</sup>Fabian Tract No. 355, 1964, p. 22.

<sup>10</sup> Samuel Brittain, Treasury under the Torries, pp. 38-39, 1964.

Crossman Case, publication of material relevant to decision-making is useful and important. He said:

Bureaucratic frame of mind, self-regarding, hierarchical and averse to open discussion is a major though perhaps well intentioned threat to our society. ... That they should operate in secrecy with very little accountability to the public is against the national interest. It is very difficult for a Member of Parliament or any citizen to penetrate the veil of secrecy which surrounds the means by which decisions are made in Government.<sup>12</sup>

It is, however, common ground that a great deal of information is given by government departments to the press and public. Every civil servant may be authorised, either by his superior or by the nature of his duties to communicate to the outside world. Ministers are self-authorising and senior civil servants often function under the guise of implicit authorisation. In major matters, the release can well be at the ministerial level and then downwards, but in many of the day to day matters, where one deals with the middle level civil servant, one may not get this openness because he is still in doubt, he has not got his direct briefing and this is where one meets the difficult or capricious situations referred to earlier where one departmental official will not say something and another one will. It is here that the directional concept is valuable. The question is whether it is a situation where nothing is published except what the government ordains to be published or whether the public is entitled to the information that governs its life. It is a question of changing the direction of the flow of information from negative to positive or positive to negative.

In a democracy, the administrative apparatus normally consists of the political executive, represented by the ministers as members of the cabinet, who lay down the policy and supervise and control its implementation, and the executive which may loosely be called the civil service or administrative machinery working thereunder. It has always been assumed by politicians and the civil service that cabinet proceedings and cabinet papers are secret and cannot be publicly disclosed until they have passed into history. The cabinet works on the doctrine of collective responsibility. When the cabinet reaches a decision, irrespective of individual views held or expressed, each member shares in the collective responsibility of that decision. When confidentiality among colleagues in the cabinet is lost, discussion will be less free and frank. Its quality will be impaired and so will the quality of the decisions reached. The unauthorised disclosure of cabinet documents undermines public confidence.

<sup>&</sup>lt;sup>12</sup>Jo Grimmond (M.P. since 1950 and former leader Liberal Party) in his evidence in Crossman Case.

### THE CROSSMAN DIARIES

It is on such a horizon of public life and administration that Dick Crossman came as one of those meteors that occasionally lighten the British political firmament. His lasting contribution to this debate is not only through his numerous writings as a political scientist, nor his crucial and crusading role as a minister from 1964-70, but in the publication of his diaries <sup>13</sup> after his death. His deliberate aim, as he put it in the introduction to the first volume was "to disclose the secret operations of Government, thereby enabling the humblest elector to cut his way through the masses of foliage which we call the myth of democracy".

The value of the work lies not in any specific facts or stories, though occasionally they do throw useful light and illustrate some valuable aspects, but on the total impact created by the mass of details, the accounts of meetings, of deputations, of intrigues, of behind the curtain discussions. The cumulative impact of the stories and episodes concerning Lady Sharp, his permanent secretary, and regarding her replacement is helpful and constitutes a valuable part of the book. It will probably be one of the best uninhibited accounts of the minister-civil servant relationship.

Crossman was always critical of the expanding power of the British Prime Minister and had used the expression and expanded some of the arguments and material of John P. Mackintosh's book 'The British Cabinet' in his introduction to the Fontana edition of Walter Bagehot's book 'The English Constitution'. Therefore, the picture Crossman depicts of cabinet government shows the complexities of the machine. He describes the functioning of the official committees parallel to the cabinet committees and how they would consider the proposed agenda and take a tentative stand on various issues almost anticipating the decisions formally to be taken in cabinet and its committees. Crossman gave some lectures at Harward which were later published.<sup>14</sup> The record of discussion of some of the points in that connection provides interesting sidelights. Crossman had mentioned that since the PM alone approves the minutes after they had been drafted by the cabinet secretariat and as he was able to have the minutes written as he wanted, the record of cabinet discussion and decisions could be slanted and this greatly strengthened the PM's hands. Elsewhere, he illustrated the omission from the minutes of certain observations, comments or episodes on occasions depending on the exigencies of situation. Then he had said that the "Cabinet Secretary, Burke Trend was Harold's grand vizier and the Cabinet Secretariat his praetorian guard and the way to the top of the civil service is via Cabinet Secretariat". 15 His reference to the power wielded by the cabinet secretary

<sup>&</sup>lt;sup>13</sup>Crossman, *The Crossman Diaries*, (1979) Hamish Hamilton & Jonathan Cape. (First published Diaries of a Cabinet Minister, Vol. I, 1975; Vol. II, 1976; Vol. III, 1977).

<sup>&</sup>lt;sup>14</sup>Crossman, *Inside View*, 1972, London, Cape. <sup>15</sup>Crossman, *The Crossman Diaries*, op. cit., pp. 625-627,

and/or the PM, if they are close, is quite interesting and has parallels elsewhere in contemporary history.

In his evidence before the Franks Committee commenting on the civil servants, Crossman said that, given a chance, they will use it for further suppression of necessary information "because every civil servant, when in doubt, says no and it is the politician who has to order him to publish. This is a great discovery I made as a Minister." 16 Crossman probably had in mind an interesiing experience reflecting on this theory which he had in March 1969, as Minister of Health and Social Security. It may be worthwhile noticing this episode in some detail as it illustrates several aspects of the conflict between openness and secrecy and also of the relationship of the civil servant and minister and the motivations of the two. An outrageous story had appeared in a newspaper regarding cruelty and pilfering in the Ely Mental Hospital, Cardiff, and an inquiry was established under one of the ablest of young tory lawyers, Geoffery Howe, MP (at present Chancellor of the Exchequer) whose 83,000 worded report completely substantiated the press report. The department opposed its publication without editing to which understandably Geoffery Howe was not agreeable. The argument had gone on for two months. The matter was sent to Crossman only two days before a decision was to be taken on this. After having read the report overnight, Crossman thought that the best course was outright publication, but "I could only publish and survive politically if, in the course of my statement, I announced necessary changes in policy including the adoption ... of a system of inspectorates such as the health service has never yet permitted itself". "I pointed out that either we took the credit of publishing the whole thing or we could be at the mercy of one of the cleverest lawyers". During the critical meeting which followed, the officials agreed to the setting up of the inspectorate after initially dubbing the idea as 'impracticable', and conceded the release of the report in full after it came to light that a visitor's report made three or four years back admitting scandalous conditions to the authorities had been filed without any action having been taken thereon and that two nurses had been dismissed because they tried to expose the scandals. Finally, in Crossman's words,

At last we got to the statement. This must have been ninth or tenth draft and I felt a great frog in my throat when I started because I really do care and feel righteously indignant about it. I launched in and in thirty seconds I knew I had gripped the House by admitting the truth of the allegations, the excellence of the report and the need for remedial action. ... I sat down knowing I had brought off a success. 17

<sup>&</sup>lt;sup>18</sup>Report of Departmental Committee on Section 2 of the Official Secrets Act, op. cit., Vol. IV, pp. 75-76.

<sup>&</sup>lt;sup>17</sup>Crossman, The Crossman Diaries, op. cit., pp. 527-531.

The incident narrated lends an inevitable echo in the minds of those who have dealt with similar matters or situations at one time or the other. But what is not appreciated or publicised sometimes is the reversal of the roles of the civil servant and the politician—one wanting to reveal and the other to suppress. Even in the instant case, without questioning Crossman's ultimate soft attitude towards more openness, perhaps one could find a part of the clue from the fact that if part of the report was suppressed, he apprehended severe criticism from "one of the cleverest conservative lawyers" in parliament. It is as a result of similar experiences that Crossman came to agree in part with the power and influence of the civil service, but agrees that a powerful, hardworking, self-confident minister, with the backing of the PM, can see his way through.<sup>18</sup>

Yet another aspect on which Crossman has thrown valuable light is the functioning of the sub-committees of the cabinet and the procedure followed in decisions being taken by the chairmen by establishing consensus and not by counting votes. A minute of PM Wilson on cabinet committee procedure quoted by Crossman makes interesting reading. If you had standing committees with permanent members working as a team, as microcosm of the cabinet, it would be satisfactory; but if half the awkward decisions are shoved outside into these committees, with the concerned minister's right of appeal against its decision being very limited, cabinet government could possibly be finished. Similarly, the book abounds in graphic and detailed descriptions and discussions of relations with colleagues, pressure groups, parliament and functioning of inner groups and the inner cabinet. It has been said to be the most important book on British Government to have appeared since the war.

The importance Crossman attached to the publication of his diaries is evident from the fact that his first action after hearing in September 1973 that he could expect to live only a little longer was the writing of a letter to his publisher saying,

...The main immediate task of the literary executors if I die before publication of my ministerial diaries is complete, would be...to make sure that the pressure which will undoubtedly be brought both from Whitehall and from Westminster to prevent publication part of the manuscript is completely rejected..."<sup>20</sup>

#### THE TRIAL

Crossman's words were prophetic indeed. Pressure did come from the expected quarters. But the struggle for publication created history as this

<sup>&</sup>lt;sup>18</sup>Report of Departmental Committee on Section 2 of the Official Secrets Act, op. cit. <sup>19</sup>Crossman, *The Crossman Diaries*, op. cit., pp. 619-620.

<sup>&</sup>lt;sup>20</sup>Hugo Young, *The Crossman Affair*, London, 1976, Hamish Hamilton & Jonathan Cape, p. 12.

was the first occasion when the Attorney General deemed it necessary to take action in a court of law, on the report of the secretary to the cabinet. This historic trial began on July 22, 1975 before the Lord Chief Justice, Lord Widgery. Numerous authors, jurists, politicians, social scientists and ex-ministers gave evidence through their affidavits from both sides. Appearance of Sir John Hunt, cabinet secretary, as the only witness to give oral evidence was another unique event. Sunday Times, who were to serialise the book, and the literary executors of Crossman, defended the case through their distinguished counsels.

Until World War I, there was no cabinet secretariat, no minutes and no agenda. It was only in the 20th century that memoir writing by senior ministers began and a convention was established that they were allowed access to cabinet papers to refresh their memories. The danger of this writing was that the authors who enjoyed privileged access has sometimes strong motives in slanting their contributions to cabinet discussions, with a view to enhance their position in contemporary history. The first example arose from the controversies of World War I. Winston Churchill quoted from war cabinet papers in the 'World Crisis' to justify his role in Dardanelles operations, and so did Lloyd George for his 'War Memoirs'. After the two wars, a more liberal view was taken for some of the books by the cabinet secretary and the PM as they were in the nature of memoirs. A fascinating review of memoir writing and control procedures was recounted in an affidavit<sup>21</sup> before the court which did conclude that the control procedures were in the process of evolution and extension from 1916, when the cabinet office was set up, till 1934. In practice, ministers established a form of right in equity, in the nature of an honourable convention, to lay before the public the justification of their policy or stand. The limitation of public interest was recognised by ministers, but they refused to be bound by a fixed doctrine in terms of years, least of all by the fifty or thirty years rule (under the Public Records Act).

The convention and past practice regarding the basis on which the memoirs were examined in the past by the cabinet secretary reflected the needs which were felt for the protection of certain types of information. They were codified for the first time by Sir John Hunt, then cabinet secretary, to deal with the issues arising in the Crossman case and called 'parameters'—an expression which has since been used consistently. In essence the objection contained in these parameters to the publication of the diaries was against 'blow by blow' accounts of cabinet or cabinet committees so as to reveal the views and attitudes of different ministers, disclosure of advice given by senior civil servants and also about discussion and considerations leading to senior civil service appointments.

<sup>&</sup>lt;sup>21</sup>Keith Middleman's (Lecturer in Modern History at Sussex University) evidence in Crossman Case,

The main issue in the case was: have the courts the power to protect the trade secrets of the board-room, the confidence of marriage, the correspondence between the client and professional adviser, but not the confidential discussions on high matters of state around the cabinet between minister and minister and minister and adviser? The basis of this contention is the confidential character of the cabinet proceedings derived from the concept of collective responsibility. The Attorney-General contended that the court should restrain any disclosure thereof if the public interest in concealment outweighed the public interest in the right to free publication.

The opposite argument was that the convention was not absolute and rested on an obligation founded in conscience only. Hence publication of diaries was not capable of control by the courts. Referring to these two arguments and voluminous evidence on both sides, by distinguished jurists and politicians, Lord Widgery said,

It seems to me that the degree of protection afforded to cabinet papers and discussions cannot be determined by a single rule of thumb. Some secrets require a high degree of protection for a short time. Others require protection until a new political generation has taken over. In the present case, the Attorney General asks for a perpetual injunction to restrain further publication of diaries in whole or in part. I am far from convinced that he has made out a case that the public interest requires such a draconian remedy when regard is had to other public interests, such as the freedom of speech.

He also accepted the need for protection of advice given by civil servants, but not without close investigation, as a matter of course, for a period of years. Legally extending the Argyll powers<sup>22</sup> in regard to domestic secrets to official secrets, Lord Widgery said that the courts should not be powerless in this sphere, and, therefore, when a cabinet minister receives information in confidence, the improper publication of such information can be restrained by court and his obligation is more serious than merely to observe a gentleman's agreement.

He further decided the issue by saying,

In these actions we are concerned with the publication of diaries at a time when eleven years have expired since the first recorded events.... There must, however, be a limit in time after which the confidential character of information and the duty of the court to restrain will lapse.

<sup>&</sup>lt;sup>22</sup>Argyll vs. Argyll (1967 Ch. 302) upholding in confidential relationship independently of any law.

In the case of the diaries of Crossman, that stage, in the opinion of the judge, had been reached and so their publication was allowed.

In regard to the fact that the diaries disclosed the advice given by civil servants who cannot be expected to advise frankly if that advice is not treated as confidential and also of the confidential character of the observations about the capacities of senior civil servants and their suitability for specific appointments, the judge's remarks are very telling. He said,

I can see no ground in law which would entitle the court to restrain publication of these matters. A minister is no doubt responsible for his department and accountable for its errors even though the individual fault is found in his subordinate.... To disclose the fault of subordinate may amount to cowardice or bad taste, but I find no ground for saying that either the Crown or the individual civil servant has an enforceable right to have the advice which he gives treated as confidential for all time.

Perhaps in taking this view the judge was influenced by the view that candour, frankness and freedom of advice do not always lead officials to tell the minister exactly what they think of him. There are sometimes difficulties about ministers' checking advice with other people. The test of advice by the outcome is limited by the long lags in the results of policy and the advice on alternatives is not testable by later administration or by outside investigation.

The principle of confidentiality of advice is said to be a survival of a concept of government, when the governing class, under pressure, did not feel it necessary honestly to account for their action and where the authority necessary to the government was maintained as a mystique rather than by articulation of people's aspirations illuminiated by an understanding of the practicalities.

### EXTENSION OF THE LAW OF CONFIDENCE

The Crossman case judgement answered one question, but exposed and left unanswered several more. The most positive long-term result was the extension of the law of confidence into the area of public affairs. Politicians, civil servants and, presumably anyone else remotely concerned in public life, now has a right to go to court to try his luck against an editor or a journalist or a writing colleague to restrain them from publishing. The effect could be to confine quite substantially the already restricted information about the business of the government. In contrast to this, the second main effect of the judgement was to destroy the principle, as an inexorable principle of cabinet secrecy. By letting volume I to be published, Lord Widgery did more than that. Absolute assertions were made by Lord Gardner, Lord Hailsham and

Sir Peter Rawlinson in their evidence during the case that publication of diaries will inhibit 'free discussions' by ministers, tendering of 'proper advice' in future, and restrict discussions amongst them from being 'ultimately frank and unreserved'. After Widgery such assertions cannot be made with the same lofty and unchallengeable certitude. The judgement showed that they are not unassailable truths, but debatable assumptions, subject to review in each particular case. It cuts back the power of the executive and shows that judges will no more be dazzled by the cry of cabinet secrets. The theory of such records being governed by the thirty-year rule in the Public Records Act and the quasi-vetoing process of the secretary of the cabinet has also been exploded.

Negatively, so far as giving future guidance is concerned, the law has now been left more uncertain. It left the celebrated parameters only as the starting point and if suggestions of cabinet office in regard to the omission were to be disregarded, there was no indication or ruling about the time span during which the law of confidence could be invoked. Sir Anthony Nutting giving an account of the Suez affair in his book 'No End of a Lesson'23 gave three reasons as to why he chose that time for publication. First, he thought that he owed it to history due to his inside knowledge of the operation; second, he wanted to clarify his stand with regard to the charge of betrayal of his friends after a lapse of ten years when national interest was not the end...; and, third, so that the participants in the drama were still alive to answer for themselves, if they so chose. The judge did not lay down any specific criteria for future publication.

The wide range of uncertainty thus created was felt after the case was over. The Radcliffe Committee, appointed on April 11, 1975 to review this matter reported in 1976.<sup>24</sup> The Committee argued against regulation by the statute and seemingly discouraged further memoirs being tested in the court of law. In a revealing sentence the Committee wrote:

The reasons that persuade us that confidentiality is a value that it is important to maintain in this special field of governmental relations do not lead us to think that a Judge is likely to be so equipped as to make him the best arbiter of the issues involved. The relevant considerations are political and administrative.

The Radcliffe Committee clarified and strengthened the cabinet secretary's role. Existing conventions were amplified and hardened. Apart from matters covering national security and foreign relations, confidentiality to be observed by all former ministers as regards the opinions of their colleagues, the advice received from officials, and assessments of their subordinates were

<sup>&</sup>lt;sup>23</sup>Anthony Nutting, No End of Lesson, London, Constable, 1967.

<sup>&</sup>lt;sup>24</sup>Radcliffe Committee Report (1976), CMND 6386 HMSO.

to be kept confidential for at least fifteen years after the events. Thus, where until Crossman, there were no parameters and no time limit with reference to availability of material, new parameters are endorsed and a quasi legal concept introduced with the introduction of a fifteen years rule. But the Committee recommended that compliance should be allowed to rest on the free acceptability by the individuals concerned of an obligation of honour. The government accepted the Committee's recommendations in full, as announced by the then PM, Harold Wilson, in a parliamentary answer on January 22, 1976. Thus, the more lasting effect, ironically enough, of Crossman, was to produce a tightening of the flow of information, not the loosening which he so fervently desired and cherished.

So much in regard to the disclosure of matters with which the ministers have to deal with. As we have observed earlier, due to various factors, the concept of ministerial responsibility is being redefined and modified and so also anonymity of civil servants. We have also briefly noted the effect created by the need of closer contact between public servants and the public—including the press. Departments of government are engaged in formulating or implementing policies or advising their minister on the formulation or implementation thereof in certain defined fields. All of those fields concern the public in one form or another; and it is in public interest that they are able to inform and advise their ministers in terms of, among other things, the probable impact of whatever they propose to do on the public. Then, down the ladder, the policies are executed in the field and thereby affect individuals or groups of individuals or institutions or companies. All sorts of problems arise which may get smoothened with more openness on the part of the implementing agencies like regional boards or councils or departments or their officials.

The Franks Committee was appointed in April, 1971 'to review the operation of Section 2 of the Official Secrets Act, 1911 and to make recommendations'. Evidence from government witnesses and others did indicate to the Committee that Section 2 has some effect in creating a general aura of secrecy. As a result, some civil servants are less forthcoming than they would otherwise. This applies more to junior civil servants and some of the evidence suggested that those working in the provinces are more affected than those in London.<sup>25</sup>

### BASTIONS OF SECRECY

Some jurists have considered that in UK there are four bastions of official secrecy and reticence. These are: concealment of departmental mistakes by

<sup>&</sup>lt;sup>25</sup>Report of the Departmental Committee on Section 2 of the Official Secrets Act. op. cit., Vol. I, p. 31.

ministerial responsibility, crown privilege to suppress evidence in litigation, non-disclosure of inspectors' reports after public inquiries and, of course, Section 2 of the Official Secrets Act, 1911, the review of which was the subject matter of the Franks Committee. We have noted earlier that the doctrine of ministerial responsibility is eroding and the Parliamentary Commissioner for Administration provides remedy for individual grievances. The abuse of crown privilege is rendered innocuous by a 1968 ruling<sup>26</sup> of the House of Lords and government is now subject to a law which will disallow excessive claims. Before the Committee on Tribunals and Enquiries, 1957, government departments argued desperately against disclosure of reports of inspectors, who held public inquiries, on grounds of consequent embarrassment to ministers, administrative impracticability and impairing frankness. These arguments were rejected and such disclosures have resulted in considerable improvement in procedures and public relations.<sup>27</sup> The catch-all character of Section 2 is widely accepted. It is said to lower the reputation of public service, since it is thought to be used for covering up mistakes, even when this is not true and is credited with having aggravated the secretiveness for which British administration has a bad name with the best informed critics from the Fulton Committee<sup>28</sup> to Crossman.<sup>29</sup> Perhaps, that explains the much quoted remarks of Justice Caulfield in the Sunday Telegraph case that Section 2 should be 'pensioned off'.

The stock argument for maintenance of the status quo is that it rests ultimately with ministers in UK to settle how far the disclosure of information should be authorised; and the political decision is in no way inhibited by Section 2.30 Indirect influence of the views and attitudes of a new minister towards openness would change the atmosphere in the same way as the new headmaster does in a school and people do begin behaving differently. But then one cannot too often depend on the unpredictable comings of the 'headmasters' in a department or administration and on their whims and fancies. Some consistency and continuity of policy is necessary and desirable in this behalf. Dealing with this and similar arguments used in the White Paper of 1969, 'Information and Public Interest', Prof. H.W.R. Wade pointed out that it was being claimed as a virtue of the system that it actually did not penalise authorised disclosure which was in contrast with an enforceable legal right to the disclosure of a great deal of official information under the American and Swedish laws. Hence it was suggested to the Franks Committee to replace Section 2 with legislation which may assist the public in obtaining

<sup>&</sup>lt;sup>26</sup>Conway vs. Rimmer (1968) AC 910.

<sup>&</sup>lt;sup>27</sup>Report of Committee on Tribunals & Inquiries, 1957 CMND 218 HMSO.

<sup>&</sup>lt;sup>28</sup>Fulton Report on the Civil Service, op. cit.

<sup>&</sup>lt;sup>29</sup>Crossman, The New Statesman, 24 September, 1971.

<sup>&</sup>lt;sup>30</sup>Report of the Departmental Committee on Section 2 of the Official Secrets Act, op. cit.

information about government on that pattern. The objective of the Swedish Act is:

to provide free interchange of opinions and enlightenment of the public, every Swedish citizen shall have free access to documents in the manner specified below.

And in signing the American Act, President Johnson said, "A democracy works best when the people have all the information that the security of the nation permits". Section 2 as it stands repudiates this policy.<sup>31</sup>

The Franks Committee, however, felt restricted by their terms of reference and found that the question of recommending legislation on the lines of the Swedish and US laws on public access to official documents "raised important constitutional questions going beyond our terms of reference". They did not go fully into this question, but believed that to the extent there was a connection between openness in government and law relating to official information, their proposals to replace Section 2 with much narrower ones would represent a move towards greater openness.

But the Committee did make certain observations on this question which do deserve a mention. First, they rightly referred to an extensive list of the kinds of documents in the US and Sweden which are excepted from the right of public access. Both laws are drafted in a way so as to protect internal processes of government from disclosure. In Sweden, an exception is made 'for working papers' prepared by the concerned authority before reaching a decision and the US laws are in terms of presettled decisions and procedures and identifiable documents. Second, constitutional arrangements, political tradition, national character, habits and ways of thought do have an impact on the system which may be suitable. US and Sweden have both written constitutions and a system of separation of powers unlike the British system which is based on parliamentary control with a strong executive. In this context, the British position is comparable to Canada which also has a system of protection of information analogous to Section 2.32

This is hardly the place for a critical review of the provisions for disclosure of information in different countries. However, such a study has revealed that in other democratic countries, discretionary release of information is considered inadequate for a full understanding of a policy area, if pressure groups, journalists and academics are able to be watch dogs alongside the legislature, ready to expose the inadequacies and shortcomings of the executive and they have pressed for the right to take the initiative in requesting documents

<sup>&</sup>lt;sup>31</sup>Evidence Prof. H.W.R. Wade (Professor of English Law, Oxford University). Report of the Departmental Committee on Section 2 of the Official Secrets Act, op. cit., pp. 414-16.

<sup>32</sup>Report of the Departmental Committee on Section 2 of the Official Secrets Act, op. cit., Vol. I, pp. 35-36.

and information. In Scandinavia, little use has been made of the right of access provisions. In Denmark, when the revised law was introduced in 1970, a rush of inquiries was expected, but this did not happen. The Swedish experience is largely that of individuals seeking records maintained about themselves relating to tax, social services and the like. Press is the chief user in these two countries and in Norway so far as the general policy documents are concerned. In US, the demand has been much more varied and substantial. Individuals seeking information on themselves form the largest group. But the press has been the chief beneficiary. Where the American experience differs from the Scandinavian is in the number of litigations\* which have followed a large number of requests from lawyers representing corporations and firms with a view to arming themselves against competition with rivals or against possible investigations by the government. No doubt, the cost of enforcement has been stupendous in US and the law enforcement officials almost universally believe that ability of those agencies to gather and exchange information is being eroded.<sup>33</sup> The administrative impact in certain federal agencies has been pronounced. But many inside and outside government believe that the Acts have conferred significant benefits, including reducing unnecessary secrecy, making officials more sensitive to public reaction to the advice they tender and forcing government to improve its system of record keeping.34

So much for the overseas experience in open government, to put the problem in perspective. Now let us briefly take up the thread from the Franks Committee's report in September 1972 and complete the story. While the recommendations were being studied, publication of the Crossman diaries, and the historic trial which preceded it, did finally result in tightening the flow of information from publication by former ministers (and also former members of public services) of memoirs and other works relating to their experiences concerned with confidential relationships before the expiry of 15 years.85 That situation continues.

### RECENT LEGISLATIVE STEPS

With a view to implement, with modifications and additions, the recommendations of the Franks Committee, a Protection of Official Information Bill was introduced in parliament. This Bill, because of a provision permitting

\* 500 court rulings have been given by the Supreme Court, 900 law suits pending under FOIA and 200 under Privacy Act. Refer 34, p. 25.

33 Report by Comptroller General on November 15, 1978 on the impact of Freedom of Information Act, 1974 and Privacy Act, 1974 on law enforcement agencies to the Committee on the Judiciary, US Senate (LDC-7-119).

<sup>34</sup>Disclosure of Official Information, p. 29—A Report on Overseas Practice (1979), Civil Service Department, HMSO.

<sup>85</sup>Radcliffe Committee Report, op. cit., paras 3 and 12.

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ministers to rule at their discretion (which the courts will not be able to question) that the disclosure of certain government information "is likely to cause serious injury to the interests of the nation or endanger the safety of the citizens", ironically enough, has been widely considered, both in the press and parliament, to be more oppressive than the existing Official Secrets Act. 36 Perhaps, that is why 'The Guardian' called on backbenchers, whose own rights would look to be at stake, to be ready to join forces against the collusion of the two front benches—the labour front bench, which drafted the Bill, with many of the same provisions during Mr. Callaghan's Government, and the conservative front bench which now blithely accepts even those parts of the Bill against which it protested when in opposition.<sup>37</sup> The Bill, however, has since been dropped as a sequel of the Blunt episode involving the exposure by a journalist 38 of a UK citizen as the fourth man in the Philby affair, who was a Russian spy during World War II after almost three decades during which he was knighted and served as an honorary art adviser to the Queen. While dropping the Bill, the government said that it considers that its main duty is "for the efficiency and morale of the security services. For that we must recognise they can only do so if they have considerable element of secrecy".39 Who knows what further provisions for secrecy are required?

In this situation one does feel that perhaps there was quite some truth in the statement made by a promient journalist in his evidence before the Franks Committee. To quote his words,

You quite clearly have a clash between the Government's desire to carry on its affairs efficiently and secretly, and the public's desire, which we represent, to know what is happening in order that they can influence events, and they cannot influence events unless they have the information. It is a belief which a number of politicians have expressed when they have been in Opposition that they are in favour of more open Government, and when they actually arrive in Downing Street in the Cabinet room they seem to change their minds.<sup>40</sup>

It seems the government shares the Franks Committee's view of delinking review of the Official Secrets Act with the issue of public right of access to state information. This was confirmed by the Lord Chancellor on

<sup>36</sup>Protection of Official Information Bill 1979, op. cit., Section 9.

<sup>37</sup> The Guardian, November 5, 1979.

<sup>38</sup> Andrew Boyle, The Chamber of Treason, 1979, London, Hutchinson.

 <sup>39</sup> The Times, November 21, 1979.
 40 Charles Wintour (Editor, Evening Standard). Report of the Departmental Committee on Section 2 of the Official Secrets Act, op. cit., p. 41, Vol IV.

November 5 last in the House of Lords. When referring to the aforesaid Bill, he said,

There is no intention to couple this Bill with the totally different and potentially more controversial issue—whether and to what extent we should follow the USA and give the citizen the general right, legally enforceable through the courts, of access to Government files.<sup>41</sup>

A word about some steps on the positive side of secrecy—official and unofficial—at this stage will be relevant. Despaired of government's interest and initiative, a private member's Freedom of Information Bill was introduced in parliament and had its second reading in November 1979. Before that the then PM had appointed in 1977 a cabinet committee of civil servants to prepare a variety of open government schemes to buy off the Private Member's Bill, if it ever became near becoming the law. In July 1977, Lord Croham, head of civil service, saddled the government with an open government directive asking various departments to release as much background information on decisions as possible and to keep lists of material released under that policy for supply to members of parliament and journalists. On June 20, 1979, the new PM is credited to have amended the Croham directive and abolished the aforesaid committee. The statement of Paul Channon, State Minister for Civil Service and Francis Pym, Secretary of State for Defence, in June 1979 assured release of "as much information as possible including background papers". The PM's personal injunction to openness takes the form of a letter of June 20 by her principal private secretary—marked 'confidential'—ensuring secrecy on the directive on open government! Efforts of the press to know more elicited a confirmation from the PM's press secretary about the issue of a directive to this effect, but nothing more. The spokesman omitted to mention that the directive also contains a declaration of government's intention not to introduce legislation to establish the right of access to official information and that no further formal steps will be taken.42

Whitehall and others have consistently argued against a freedom of information law on the ground that it would be inappropriate mainly because ministers in UK—unlike those in US, for instance—are accountable to parliament for both their actions and for those of their civil servants and there is also the Parliamentary Commissioner Act. Canadian experience in openness in government was considered particularly relevant because of the similarity of the British and Canadian constitutions and practice. The introduction of a similar Bill by the Canadian Government in November 1979 knocks down such an argument. For the first time such a law has been proposed in a country

<sup>41</sup> The Guardian, November 6, 1979.

<sup>42</sup> The Times, November 27, 1979, "Secrecy Shrouds No. 10 'Directive on Open Government'"

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whose constitution is modelled on Westminster and on the British parliamentary system. Under the Bill "instead of everything in the government's possession being secret unless decided otherwise", the president of the Canadian Privy Council told Canadian MPs, "everything will now be public unless declared secret, under precise terms defined by parliament". In the event of a dispute, ministers will not be able to withhold documents from the courts, who will be empowered to disclose the documents if they conclude that it is in the public interest to do so. The whole tenor of the Bill is in marked contrast to the Protection of Information Bill prepared by the British Government (and dropped recently) which provides no appeals against classification of documents by civil servants nor against a minister's certificate, which will by itself be conclusive, that a disclosure has caused serious damage.<sup>43</sup>

Michael Meacher, MP, whose Freedom of Information Bill is before the parliament continues to challenge 'why are we so secretive about the secrets' and the examples he gives are of great consumer interest. For example, both Britain and US ban some food additives having adverse safety tests. While in US, the text results are open to public, in Britain even data already published by UN and other public sources is clamped. Again in UK, harbour masters and health authorities are secretive about passenger liners having high rates of food poisoning; in US such disturbing deficiencies of some British liners are made known to American consumers and travel agents. Meacher concludes that "official secrecy has much more to do with protecting the government of the day from embarrassment than with the nation's security". One is tempted to quote Crossman's apt remarks on the subject which lend support to Meacher:

Of course if you are running a show you hate any leaks about yourself and things that are embarrassing if they come out. It is extremely difficult to distinguish something which infringes public interest and something which is highly inconvenient to you as a civil servant or politician and in my experience these distinctions are not made at present. People want to have secrecy for good, bad and indifferent reasons.

Meacher's Bill has a long way to go, if at all it proceeds. In challenging the cult of secrecy in Britain today, hard is the way and strait the gate. The road is long and is strewn with difficulties. Where and when the struggle will end, it is hard to tell, but is interesting to watch.<sup>45</sup>

<sup>43</sup> The Guardian, op. cit.

<sup>44</sup>Michael Meacher, "Why Are We So Secretive About Our Secrets", The Times, November 20, 1979.

<sup>&</sup>lt;sup>45</sup>Report of the Departmental Committee on Section 2 of the Official Secrets Act, op. cit., Vol. IV, p. 73.

# Personal Privacy in the United States\*

N.K.N. lyengar

THE PRACTICE of keeping records about individuals in the United States has undergone dramatic changes during the last three decades. This is mainly due to rapid urbanisation, industrialisation and recent technological advancements, especially in the field of electronics and computers. The expanding role of the federal government in areas of economic and social life has also accentuated the need for more information about individuals in regulating the affairs of society.

Record keeping about individuals now covers almost everyone and influences everyone's life. Each individual plays a dual role in this connection —as an object of information gathering and as a consumer of the benefits and services that depend on it. The Americans live inescapably in an 'information society' and few of them have the option of avoiding relationships with record keeping organisations. To do so, is to forego not only credit but also insurance, employment, medical care, education, and all forms of government services to indviduals.

Improper relationship between record keeping practices and individuals can result in substantial harm to the persons concerned. Inaccurate, unfair or outdated records have caused individuals to be denied jobs, housing, insurance, education and other benefits. Irrelevant or discriminatory records also unfairly penalise the individual. Circulation of information that the individual regards as sensitive and confidential, even if it does not cause loss or benefit, may result in severe psychic damage.

There is a growing societal concern that accumulation of information about individuals tends to enhance authority and, further, may lead to an imbalance between the individual's personal privacy interests and society's information needs. "The heart of the 'privacy protection issue' is the nexus between uses that organizations make of records they keep about individuals and the effects such uses can have on each individual."

<sup>\*</sup>Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission, July, 1977.

<sup>&</sup>lt;sup>1</sup>Willis H. Ware and Carole W. Parsons, "Perspectives on Privacy", *The Bureaucrat*. Vol. 5, July 1976, p. 143.

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### RIGHT TO PRIVACY

Several social scientists have attempted to distinguish the concepts of privacy and secrecy. Both involve reduced observability and an increased potential to deny access to others. They, however, differ in the moral content of the behaviour which is concealed. Secrecy implies the concealment of something which is negatively valued by the excluded audience and, in some instances, by the perpetrator as well. Privacy, by contrast, protects behaviour which is either morally neutral or valued by society as well as by the perpetrators. Privacy has a consensual basis in society, while secrecy does not. There is an agreed upon 'right to privacy' in many areas of contemporary life; however, there is no equivalent, consensual 'right to secrecy'.<sup>2</sup>

The idea that the right to privacy<sup>3</sup> is an essential attribute of personal and psychological freedom in modern democratic society has been hailed as the most exciting and influential legal development of modern American tort law. The notion that privacy could be given constitutional dimension was probably the most innovative achievements of the Warren Court.<sup>4</sup> Although the right to privacy was loosely mentioned in various decisions of the Supreme Court it was not until the 1965 decision in *Griswold V. Connecticut* that the issue of privacy came suddenly to the forefront.

The right to privacy, as it has emerged from Griswold and other decisions, is composed of three fundamental constitutional guarantees and has three principal dimensions. The first amendment of free speech and assembly is designed to safeguard the anonymity of political belief, and especially political association. It guarantees that the individual is not compelled to disclose publicly the content of his political beliefs or his membership in political associations. The fourth amendment, certainly the core element in constitutional privacy, protects one's reasonable expectations of privacy by imposing stiff procedural requisites which must be met before a breach in the sanctity of one's physical location may occur. The third and most absolute component is the fifth amendment's ban on self-incrimination, a right which safeguards the innermost sanctity of a person's mind from compulsory governmental intrusion. The total effect of these guarantees is to create a zone of privacy around various personal interests that the government

<sup>2</sup>Carol Warren and Barbara Caslett "Privacy and Secrecy: A Conceptual Comparison", *Journal of Social Issues*, Vol. 33, No. 3, 1977, pp. 43-51. See C.J. Friedrich, "Secrecy Versus Privacy: The Democratic Dilemma", in J.R. Pencock and J.W. Chapman (eds.), *Privacy*, New York, Atherton, 1971.

<sup>8</sup>The word 'privacy' is nowhere mentioned in the American constitution. The constitutional guarantees, together with the demand for 'life, liberty and the pursuit of happiness', as enunciated by the Declaration of Independence, form the basis of the right to privacy, the theoretical context from which has developed the narrower law of privacy.

<sup>4</sup>Isidore Silver, "The Future of Constitutional Privacy", Saint Louis University Law Journal, Vol. 21, No. 2, 1977, pp. 211-280.

cannot violate without showing proper justification.5

# LEGISLATION OF FAIRNESS IN RECORD KEEPING

Although many issues in the 1960s and early 1970s were loosely grouped under the category of invasions of privacy, it is clear that many of the perceived problems had very little in common. Some of the actual or potential invasions of privacy involved physical surveillance or wiretapping; some involved mail openings or burglaries conducted by government agencies; others centred on harassment of individuals for political purposes; and still others concerned the unfair use of records about individuals.<sup>6</sup>

The inquiry into these matters by a number of congressional committees did not share a common analytical framework nor were the distinctions among different types of privacy invasions sharply drawn. Nevertheless, they succeeded in focusing public attention on privacy issues and in amassing useful information regarding particular aspects of the privacy protection problem.<sup>7</sup>

The Congress gave expression to society's strong urge in opening the records of federal government agencies to public inspection through the enactment of the statute—the Freedom of Information Act 1966 (FOIA). The Act allows any person to see and obtain a copy of any record in the possession of the federal government without regard to his need for or interest in it. An agency can withhold a record that falls within one of FOIA exemptions but its determination to do so, if appealed by the requestor, must withstand administrative and judicial review.

In 1972 the Secretary's Advisory Committee on Automated Personal Data System was appointed by the Department of Health, Education and Welfare<sup>8</sup> (the DHEW Committee) to explore the impact of computers on record keeping about individuals and, in addition, to inquire into and make recommendations regarding the use of social security number. After examining various definitions of privacy, the Secretary's Advisory Committee concluded that the most significant aspect of the way organisations keep and

<sup>5</sup>See R.H. Clark, "Constitutional Sources of the Penumbral Right to Privacy", *Villanova Law Review*, Vol. 19, No. 6, June, 1974, p. 834. W.M. Beany, "The Right to Privacy and American Law", *Law and Contemporary Problems*, vol. 31, 1966, pp. 253-271.

<sup>6</sup>Report of the Privacy Study Commission, p. 500.

<sup>7</sup>U.S. Congress (1972), Records Maintained by the Government Agencies. Hearings before a Sub-Committee of Government Operations, House of Representatives, H.R. 9527 Ninety Second Congress, Second Session.

U.S. Congress (1971), Federal Data Banks, Computers and Bill of Rights. Hearings before the Sub-Committee on Constitutional Rights of the Committee on the Judiciary, Senate. Ninety Second Congress, First Session.

<sup>8</sup>Department of Health, Education and Welfare Secretary's Advisory Committee on Automated Personal Data Systems, *Records, Computers and the Rights of Citizens*, Washington D.C., 1973.

use records about individuals was the extent to which individuals to whom the records pertained were unable to control their use. The Committee advanced the concept of 'fair information practice' as the underlying rationale for the record keeping principles. By focusing on the issue of fairness, the Committee explicitly recognised that personal data keeping is an essential societal function. However, the Committee was also emphatic in its assertion that as individuals and organisations, both, become increasingly dependent on the recording and use of personal information, it is proper for the holders of that information to assume their share of responsibility for its maintenance and use. Accordingly, to strike a balance between institutional and individual prerogatives, the Committee recommended a 'Code of Fair Information Practices' based on five principles:

- 1. There must be no personal data record keeping systems whose very existence is secret.
- 2. There must be a way for an individual to find out what information about him is in a record and how it is used.
- 3. There must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purposes without his consent.
- 4. There must be a way for an individual to correct or amend a record of identifiable information about him.
- Any organisation creating, maintaining, using or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take reasonable precautions to prevent misuse of the data.

These five principles enunciated by the DHEW Committee provided the necessary intellectual framework for the Privacy Act of 1974 (Public Law 93-579). The main objective of the Act is to ensure that the records a federal agency maintains about an individual are as accurate, timely, complete and relevant as is necessary to assure that they are not the cause of unfairness on any decision about the individual made on the basis of them. Proper management of records about individuals is the key to this objective, and the Privacy Act seeks to enlist the individual's help in achieving it by giving him a right to see, copy and correct or amend the records about himself.

The Fair Credit Reporting Act (FCRA) and the Fair Credit Billing Act (FCBA) also focus on fairness in record keeping, though their scope of application and their specific requirements differ from those of the Privacy Act. FCRA requirements apply primarily to the support organisations which

<sup>9</sup>See Hugh V. O'Neill, "The Privacy Act of 1974: Introduction and Overview", *The Bureaucrat*, Vol. 5, July 1976, pp. 131-141. See also Willis H. Ware and Carole W. Parsons, "Perspectives on Bureaucracy: A Progress Report," *The Bureaucrat*, Vol. 5, 1976, pp. 141-156.

verify and supplement the information a credit, insurance or employment applicant divulges in those three areas, but which do not themselves participate in the decisions about applicants.

Other recent legislations centering on fairness in record keeping includes the Family Educational Rights and the Privacy Act of 1974 and the several state fair-information-practice statutes. With the exception of the Privacy Act, which had a strong backing from the Ford Administration, the initiative for each of these laws has come primarily from the legislative branch.<sup>10</sup>

The Privacy Act is intended primarily to provide access by individuals to certain records maintained about them by federal agencies except for reasons set forth in that Act. The operation of the Act is limited only to the executive branch of the federal government.<sup>11</sup> The legislative and judicial branches are not subject to the Act. Nonetheless, the Office of Technology Act (OTA)—a Congressional body—voluntarily published a notice of a system of records in the Federal Register on November 19, 1975.<sup>12</sup> The Office of Management and Budget (OMB) has been entrusted with the authority to issue interpretative guidelines and regulations and to give oversight and assistance to agencies in the implementation of the Act. This has been done primarily with a view to emphasise that the implementation of the Act is more a managerial than a legal effort.

In addition to OMB, certain other agencies have additional specific responsibilities: the Commerce Department issues standards and guidelines on computer and data security relevant to the Act, and the General Services Administration (Office of the Federal Register) issues publication guidelines for the Act.

## PRIVACY PROTECTION STUDY COMMISSION

Section 5 of the Privacy Act created the Privacy Protection Commission to advise the President and the Congress on the extent, if any, to which the principles and requirements of the Act should be applied to organisations other than the agencies of the federal executive branch.

The Commission had seven members, three appointed by the President, two by the President of the Senate, and two by the Speaker of the House of Representatives. <sup>13</sup> The Commission officially began on June 10, 1975.

The Commission was given the broad mandate to investigate the personal

10 Willis H. Ware and Carole W. Parsons, "Perspectives on Privacy", op. cit. p. 144.
11 Hugh V. O'Neill and John P. Fanning, "The Challenge of Implementing and Operating under the Privacy Act in the Largest Public Sector Conglomerate—HEW," The Bureaucrat, Vol. 5, July 1976, pp. 171-188.

<sup>12</sup>Robert P. Bedell, "The Privacy Act: The Implementation at First Glance," *The Bureaucrat*, Vol. 5, July 1976, p. 158.

<sup>13</sup>David F. Linowes (Chairman), Willis H. Ware (Vice-Chairman), William O. Bailey, William B. Dickinson, Barry M. Gold Water Jr., Edward I. Koch and Robert J. Tennessen.

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data record keeping practices of governmental, regional, and private organisations. The Commission had three major tasks to perform:

- 1. to make a study of the data banks, automated data-processing programmes, and information systems of governmental, regional and private organisations, in order to determine the standards and procedures now in force for the protection of personal information;
- 2. to make recommendation to the President and the Congress on the extent, if any, to which the principles and requirements of the Privacy Act of 1974 should be applied outside the federal executive branch—through legislation, administrative action, or voluntary adoption; and
- 3. to report on such other legislative recommendations as the Commission may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

As part of the study called for in task (1), the Commission was also required to report on five specifically enumerated issues:

- 1. whether a person engaged in inter-state commerce who maintains a mailing list should be required to remove the name and address of any individual who does not want to be on it;
- 2. whether the internal revenue service should be prohibited from transferring individually identifiable data to other federal agencies and to agencies of state government;
- 3. whether the individual who has been harmed as a consequence of wilful or intentional violation of the Privacy Act of 1974 should be able to sue the federal government for punitive damages.
- 4. whether (and if yes in what way) the standards for security and confidentiality of records that the Privacy Act requires federal agencies to adopt should be applied when a record is disclosed to a person other than an agency; and
- 5. whether, and to what extent, governmental and private information systems affect federal/state relations and the principle of separation of powers.

The Commission's report containing 654 pages with 162 recommendations was presented to the President and to the Congress on July 12, 1979. The Commission made a detailed investigation of record keeping in credit, banking, insurance, employment, medical care, education and government among others.

The Commission's findings reflect the fact "that in American society today records mediate relationships between individuals and organizations and

thus affect an individual more easily, more broadly, and more unfairly than was possible in the past". The Commission's report rightly points out that "as records continue to supplant face-to-face encounters in American society, there has been no compensatory tendency to give the individual the kind of control over the collection, use and disclosure of information about him that his face-to-face encounters normally entail."

The report looks toward a national policy on personal data record keeping that minimises intrusiveness, maximises fairness, and defines obligations with respect to the uses and disclosures that would be made of recorded information about an individual. Its policy recommendations aim at strengthening the social relationships between individuals and record keeping organisations by enforcing enforceable rights and responsibilities. In explaining ways to implement its policy recommendations, the Commission was guided by three principles: (1) that incentives for systematic reform should be created, (2) that existing regulatory and enforcement mechanisms should be used insofar as possible, and (3) that unnecessary cost should be avoided.

The vast majority of the Commission's recommendations relate directly to fairness in record keeping and generally call for reasonable procedures to assure accuracy, timeliness and completeness in records of information about individuals. The Commission evolved the following general principles which could be applied to most information systems:14

- 1. To ensure relevance, government and private institutions should collect only that personal information necessary to perform their service or fulfil their function. There should be legally established guidelines limiting the collection of irrelevant personal information.
- 2. To ensure fairness, certain information getting techniques should be banned—among them, pretext interview (interview conducted under false pretences) and polygraph (lie-detector) tests administered as a condition of employment. The latter are offensive for two reasons. First, part of the technique for establishing a 'truth' level is to ask deeply probing questions not related to the aim of the test, thus eliciting information that an individual normally would not volunteer; second, by their very nature, polygraph tests are coercive. And as a practical matter, their accuracy and reliability are open to question.
- 3. To ensure secrecy, the subject of the record should be given access to it, and given the right to correct mis-statements, to challenge the sources used and to update the record. The right should be made available to everyone as a matter of course. As a further side to accuracy and fitness, government and private organisations should adopt disposal schedules where appropriate.

<sup>&</sup>lt;sup>14</sup>See David F. Linowes, "Counterattacking the Privacy Invaders", *Politics Today*, November/December 1978, pp. 36-41.

4. To ensure confidentiality, the subject should be a participating source. The use of blanket consent form should be eliminated. Instead, the individual should be informed in advance about any proposed transfer of personal information. If that proposed transfer does not serve the original purpose for which the information was first given, then the individual should have the right to authorise the transfer. Each subsequent transfer should be made only with the informal consent of the individual. Organisations that violate confidentiality rules should be liable for civil damages.

Recognising the limitations of its recommendations in a fastly changing technological American society, the Commission concluded:

...the Commission's resolution of particular issues should not be taken as answers for all time. Though the structure proposed for resolving problems is designed to survive, changes in technology and social organization may bypass particular solutions recommended in the report. As long as America believes as more than a matter of rhetoric, in the worth of the individual citizen, it must certainly re-affirm and reinforce the protections for the privacy, and ultimately the autonomy, of the individual.

Thirteen Bills based on the Privacy Commission's recommendations were introduced in the Congress during the summer of 1977. Hearings were held on these Bills in May 1978 before the government information and individual rights sub-committee of the committee on government operations. The US Chamber of Commerce, the National Business Round Table and the American Bankers Association are all developing privacy protection guidelines for their members in accord with the Commission's findings and recommendations.

# Freedom of the Press in Sweden

[Freedom of the press is a constitutional right in Sweden. We give below the 'Fact Sheet on Sweden' describing the general background of press freedom in that country.]

The first law on the freedom of the press in Sweden was passed in 1766, but like its successors this law was repeatedly abrogated and not until 1812 was there any enduring and effective legislation. The 1812 law remained in force until 1950 and today it is still the basis of the current legislation.

The Freedom of the Press Act in Sweden is a constitutional law, which means that it is sustained by rigid constitutional guarantees. Thus a Riksdag decision on a change in this Act would have to be held over until confirmed by a newly-elected Riksdag. The foundation of the freedom of the press legislation is contained in paragraph 86 of the Constitution: "Freedom of the press means the right of every Swedish citizen to publish matter, without previous hindrance by any authority, which subsequently is only punishable before a court of law. All public documents may unconditionally be published in print, unless otherwise prescribed in the Freedom of the Press Act."

## THE PRINCIPLE OF PUBLICITY

By the terms of the Act, everybody—Swedish citizens and aliens alike—shall in principle have access to all public documents. This unique 'principle of publicity', subsequently adopted by the neighbouring countries of Denmark, Finland, and Norway but otherwise without parallel, has come to be considered indispensable to the Swedish press as a Fourth Estate supervising and criticizing the authorities.

The principle applies to documents of both central and local government institutions but not to government-owned business firms, state or municipal trading or manufacturing agencies. There has been a certain tendency in recent years to adopt business forms for handling public affairs, though the reason for this is not so much anxiety on the part of the authorities over public insight into their activities but rather the fact that in certain types of administration, particularly the business sector, company procedure greatly facilitates the work in general.

For a document to be classified as public it must be held by a government or local authority, whether it is of official or private origin. Delay or failure to register a document does not deprive it of its status as public and available to people in general. In certain cases, however, documents do not become public until the matter involved has finally been settled, for example, administrative decisions which have to be effected, and likewise verdicts. Minutes become public when they have been checked and reports, registers and diaries when they are completed.

A non-confidential document shall be available for reading or copying to anyone who requires it. An individual also has the right to order a copy from the authorities although there are exceptions to this rule in the case of certain local government documents. Application for a particular document is made to the authority who holds it. This is an informal procedure, however, which can be made either in writing or verbally and the document is issued free of charge.

The person dealing with the matter in question is responsible in the first instance for issuing a document which has been applied for. If, however, he is not prepared personally to accept such a responsibility the matter is referred to the relevant authority.

In certain instances it is not the authority holding the document who is responsible, for example, as regards documents concerning Sweden's relations with a foreign power, certain military documents and those involving the activities of the security police.

#### THE SECRECY ACT

As can be seen from the above it can happen that an application for a document is refused. Such a measure, however, must have the support of the 1937 Secrecy Act. The Secrecy Act is not a constitutional law and it may thus be amended at short notice. Those aspects of public affairs where secrecy may be applied are prescribed in the Freedom of the Press Act as follows:

documents pertaining to national security and foreign policy; documents concerning inspections, controls or measures against crime by the authorities; documents of economic significance to national or local authorities; documents relating to personal integrity, personal safety, and decorum and decency.

If the authorities reject an application for a specific document, the applicant is informed of whom he shall appeal to against this decision. The decision of a cabinet minister cannot be appealed against, however. Lawsuits relating to the issue of public documents are regarded as being of special importance and are always given priority.

### THE SECRECY STAMP

The secrecy stamp is used in Sweden in order to avoid issuing secret documents through carelessness or ignorance. These are specially stamped with a reference to the relevant paragraph of the Secrecy Act, and the date and official concerned. This in itself does not make a document secret but it serves as a reminder if, for example, the document is transferred from one office to another.

The degree of secrecy afforded a document depends upon the matter which has to be protected. Maximum secrecy duration is seventy years from the date of the document. This prolonged period of secrecy involves matters relating to personal integrity, for example most of the social welfare authorities' papers. Foreign policy secrecy duration is fifty years and then there is a sliding scale of secrecy periods down to two years. It should be remembered here that a party in a lawsuit has in principle full access to any documents relating to him. In other words secrecy is directed at outsiders. There are instances, such as mental illness or alcoholism, where an individual in the care of the authorities is not permitted access to secret papers in his case history.

#### NO CENSORSHIP

The Freedom of the Press Act does not permit any form of censorship and it likewise forbids fundamental restrictions on printing and distribution. These regulations, however, apply only to the public authorities, so that private concerns or organizations can take measures to prevent or even prohibit publication. Ninety per cent of the news stand sales of papers and magazines in Sweden is handled by a cooperative organization owned by the press and known as the Swedish Press Bureau. The Press Bureau is committed to a policy of impartial distribution of all forms of publications, subject only to a legal ban on the display of pornographic literature.

While lawmakers have explicitly forbidden censorship by the government, they have also attempted to prevent 'internal' censorship by conferring total and exclusive responsibility for the contents of a periodical publication on its 'responsible publisher'. He is appointed by the owner of the publication, who is obliged to notify the Ministry of Justice of the appointment. The publisher then retains his position until the owner dismisses him and employs someone in his place. To be a publisher one must be a Swedish citizen, domiciled in Sweden and neither a minor nor an undischarged bankrupt.

#### RESPONSIBILITY

Through the press responsibility system in freedom of the press offences only the publisher can be charged. If the publisher is found to be fictitious the responsibility rests with the owner and if for some reason he cannot be prosecuted then the printer is held responsible. Finally, and this regulation applies principally to foreign publications imported into Sweden, the distributor may be held responsible. In the matter of damages, moreover, both the owner and the publisher may in certain cases be held responsible. It is generally felt that this system functions very well in Sweden, even if its structure conflicts with certain fundamental legal principles. Probably in most cases the publisher never sees, never has time to see, an article for which he may later be prosecuted. A publisher cannot hope to check every item, contribution and article in a large daily newspaper of 50-60 pages, for example. This same publisher is likewise responsible, in principle, for all the advertisements and, naturally, for published letters and other such contributions.

#### FREEDOM OF THE PRESS OFFENCES

The Freedom of the Press Act specifically prescribes what are the offences under this law and some of the more common of these are mentioned here.

One category includes various forms of libel and defamation, racial prejudice, treasonable writing and the spreading of false rumours which may harm the country or the authorities.

Another category embraces the publicising of secret documents or the disclosure of information which may threaten national security, and also the publishing of in-camera proceedings.

The special responsibility regulations apply only to carefully defined freedom of the press offences. There are numerous offences, which are not included in these, for example copyright violations and mail order and advertising frauds where the usual criminal laws may apply.

## ANONYMITY ASSURANCE

Anyone working for a newspaper or a magazine has the right to anonymity. Anonymity protection works in the same way as the publicity principle. The purpose is to ensure and protect the press's access to information, without risk of reprisal against the informant. Disclosure of the name of an informant or a correspondent without his or her permission is a criminal offence. But there are, of course, limits to anonymity protection. Anyone offering a secret document for publication can be prosecuted and furthermore a witness called in a case which does not involve the freedom of the press may be put in a position where he has to disclose the name of an informant. At present a strengthening of anonymity protection is under consideration. The giving away verbally of defence secrets is also a punishable offence.

#### SUPERVISING THE FREEDOM OF THE PRESS

This is handled by the Minister of Justice and a special staff. All printers must submit

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one copy of everything they print, except job-printing such as visiting cards, to a freedom of the press official. If the latter considers that a publication deviates from the prescribed limits he reports to the Minister of Justice, who may order its embargo personally or through a representative. In certain cases the police may impound a publication upon notification by the general public, subject to approval by the Public Prosecutor. The police are empowered to search the premises of printers, retailers and distributors, but not private persons who may already have acquired the publication in question.

In freedom of the press cases the prosecutor is the Chancellor of Justice. If the Minister of Justice has ordered embargo, he must immediately submit a copy of the subject publication to the Chancellor of Justice, who must decide within 14 days whether or not to prosecute and confiscate. Failing this, the embargo order is null and yold.

# FREEDOM OF THE PRESS LAWSUITS

The privileged legal status accorded to the press is emphasized by the adoption of the jury system in the press courts of Sweden, where juries are alien to all other sectors of the administration of justice. The task of the jury is to confirm or deny specific questions addressed to it by the court concerning the guilt of an accused publisher. The jury comprises nine members and the parties have the right beforehand to reject any jury member they might consider unsuitable. At least six members must agree for a conviction. It is possible for the court itself to make an acquittal, despite the jury's verdict of guilty. But if the jury returns a verdict of not guilty the court cannot contest this finding. It emerges quite clearly from this how well the freedom of the press is guaranteed. There is, moreover, a special regulation prescribing that in uncertain cases the jury should preferably return a verdict of not guilty. If both parties concur a trial by jury is not necessary.

There are comparatively few freedom of the press lawsuits in Sweden; usually between ten and twenty a year, and this is because libel cases are often settled out of court. The freedom of the press authorities do not intervene in libel suits, except in cases of libel against a public official.

#### THE PRESS COUNCIL AND THE PRESS OMBUDSMAN

The Swedish Press Council is a private tribunal which deals with matters involving 'sound journalistic practices'. It was founded in 1916 by the Publicists' Club, the Swedish Journalists' Union and the Swedish Newspaper Publishers' Association.

After many years of debate on the Council's functions and several inquiries with suggestions for reforms, the three press organisations decided in 1969 to alter its membership and the rules governing its activities. What used to be a strictly professional body has now been enlarged to include representatives of the general public. One interesting innovation was to establish a new office called 'The General Public's Press Ombudsman' (PO); as a 'grievance commissioner' entrusted with 'prosecuting' violations of press ethics before the Press Council, the PO has no counterpart in any other country.

An associate judge of a court of appeal has been installed as the first Press Ombudsman. He assumed office on November 1, 1969.

#### OTHER MASS MEDIA

The Freedom of the Press Act applies to all printed matter, though not to stencils. The regulations are largely the same for periodicals (published at least four times a year) and other printed matter (books).

Where non-recurrent publications are concerned, however, the publisher does not automatically carry exclusive responsibility. The author of an individual book will normally

be legally responsible for its contents. Only if he prefers to remain anonymous or appear under an assumed name will responsibility be transferred to the publisher. A Broadcasting Liability Act went into force on July 1, 1967 which is modelled on the Freedom of the Press Act. This law penalizes offences against freedom of speech on radio and television broadcasts, just as the Freedom of the Press Act regulates freedom of expression in printed matter. Every programme is under the responsibility of a designated person who shall guard against the commission of libel offences. The Radio Act of the same date prohibits censorship of a programme by public authorities and grants the exclusive right to one company to maintain a public broadcasting service. The task of ensuring that broadcast programmes observe required standards of objectivity and impartiality is entrusted to a special body of review, the Radio Council.

Unlike physical persons, juristical or artificial persons such as firms, organizations or institutions are not entitled to take libel action under Swedish law.

In this as in many other respects, freedom of expression—and the curbs on that freedom—are governed by the same basic principles for all mass media. A special commission has now been appointed to examine the feasibility of unifying and consolidating the various special laws into a single Constitutional Mass Media Law applying the principles of the Freedom of the Press Act to all media.

# Freedom of the Press Act

# (As Adopted by the Riksdag at Its 1976-77 Ordinary Session)

[Sweden seems to have been the first country in the world to establish freedom of the press. In 1766, the Swedish Parliament adopted a Freedom of the Press Act as a part of Sweden's constitution. There have been amendments to the Act subsequently and the latest are of 1976-77.

[The Freedom of the Press Act has 14 chapters dealing with the several aspects of printing and publishing. We reproduce here the first two chapters, and the articles under them, dealing with the general principles of freedom of the press and access to official documents, respectively.]

## CHAPTER 1. ON THE FREEDOM OF THE PRESS

Art. 1.

Freedom of the press means the right of every Swedish national, without any hindrance raised beforehand by any authority or other public body, to publish any written matter, thereafter not to be prosecuted on account of the contents of such publication otherwise than before a legal court, and not to be punished therefore in any case other than such where the contents are in contravention of the express terms of law, enacted in order to preserve general order without suppressing general information.

In accordance with the principles set forth in the preceding paragraph of this Article concerning freedom of the press for all, and in order to ensure free interchange of opinions and enlightenment of the public, every Swedish national shall, subject to the provisions set forth in the present Act for the protection of individual rights and public security, have the right to express his thoughts and opinions in print, to publish official documents and to make statements and communicate information on any subject whatsoever.

Any person shall likewise have the right, unless otherwise provided in the present Act, to make statements and communicate information on any subject whatsoever for the purpose of publication in print, to the author or any other person who shall be considered the author of a representation in such publication, to the editor or editorial office, if any, of any publication, or to an enterprise dealing commercially with the forwarding of news or other communication to periodicals.

It shall furthermore be the right of any person, unless otherwise provided in this Act, to procure information on any subject whatsoever for the purpose of its publication in print, or for the purpose of making statements or communicating information in the manner referred to in the preceding paragraph.

Art. 2.

No publication shall be subject to censorship before being printed, nor shall the printing thereof be prohibited.

Furthermore, no authority or other public body may, by reason of the contents of a

publication, take any action not authorised by this Act to prevent the printing or publication thereof, or the circulation of the publication among the public.

#### Art. 3.

Except in the manner and in the cases specified in this Act, a person shall not on grounds of abuse of the freedom of the press, or complicity in such abuse, be prosecuted, convicted under penal law, or held liable for damages, nor shall the publication be confiscated or seized.

#### Art. 4.

Any person whose duty it is to pass judgment on abuses of the freedom of the press or otherwise to ensure compliance with this Act shall constantly bear in mind that freedom of the press is a foundation of a free society, always pay more attention to illegality in the subject-matter and thought than illegality in the form of expression, to the aim rather than to the manner of presentation, and, in doubtful cases, acquit rather than convict.

In determining the sanctions which under the present Act are attendant upon abuses of the freedom of the press, particular attention shall, in the case of statements requiring correction, be given to whether such correction was brought to the notice of the public in an appropriate manner.

### Art. 5.

The present Act shall apply to any matter produced by means of a printing press. It shall likewise apply to any publication which has been multicopied by way of mimeographing, photocopying, or any similar technical process, if

- 1. there is a valid publishing licence for the publication; or
- 2. the publication is provided with a notation to the effect that it has been multicopied and, in connection therewith, gives clear indication as to the identity of the person who has multicopied the publication as well as the place where and the year when such multicopying took place.

Any provision of this Act which refers to matter produced by means of a printing press, or to printing, shall be applied, unless otherwise prescribed therein, *mutatis mutandis*, to any other published matter to which the Act is applicable pursuant to the first paragraph, or to the multicopying of such published matter.

The term 'published matter' includes pictures, even if there is no accompanying text.

## Art. 6.

Printed matter shall not be considered as such unless it is published. Printed matter shall be deemed to have been published when it has been delivered for sale or for circulation in some other manner; nevertheless, this definition shall not apply to the printed documents of an authority which are not available to the public.

#### Art. 7.

The term 'periodical' refers to newspapers, magazines or other similar printed matter, as well as accompanying posters and supplements, provided that according to the publishing schedule the intention is to issue at least four separate numbers or sections of the publication under a fixed title at different periods during the year. Printed matter shall be deemed to be a periodical from the time of issue of a publishing licence until such licence is revoked.

#### Art. 8.

No privileges to publish written matter may be granted, provided, however, that such privileges for the support of public institutions as have already been granted may be renewed by the Government, each time for not more than twenty years.

Provisions regarding the copyright due an author of a literary or artistic work, or due a producer of a photographic picture, and provisions prohibiting the reproduction of literary or artistic works in a manner that infringes the cultural interests shall be laid down by law.

## Art. 9.

Notwithstanding the provisions of the present Act, rules laid down by law shall govern:

- 1. prohibitions against commercial advertisements insofar as such advertisements are used in the marketing of alcoholic beverages or tobacco products:
- prohibitions against the publication, within the framework of any commercial activity for providing credit information, of any credit report which improperly infringes the personal integrity of an individual, or which contains an incorrect or misleading statement; liability to pay compensation on account of such publication; and correction of incorrect or misleading statements;
- criminal or civil liability on account of the manner in which information has been procured.

### CHAPTER 2. ON THE PUBLIC CHARACTER OF OFFICIAL DOCUMENTS

# Art. 1.

To further free interchange of opinions and enlightenment of the public every Swedish national shall have free access to official documents.

### Art. 2.

The right to have access to official documents may be restricted only if restrictions are necessary considering:

- the security of the Realm or its relations to a foreign state or to an international organisation.
- the central financial policy, the monetary policy, or the foreign exchange policy of the Realm.
- 3. the activities of a public authority for the purpose of inspection, control, or other supervision,
- 4. the interest of prevention or prosecution of crime.
- 5. the economic interests of the State or the communities,
- 6. the protection of the personal integrity or the economic conditions of individuals,
- 7. the interest of preserving animal or plant species.

Any restriction of the right to have access to official documents shall be scrupulously specified in provisions of a specific act of law, or, if in a particular case it is found more suitable, in another act of law to which the specific act makes reference. However, upon authorization by way of such provision the Government may issue, by a decree, more detailed regulations concerning the application of that provision.

Notwithstanding the provisions of the second paragraph of this Article, it may be conferred, by way of such provision as referred to therein, upon the Riksdag or the Government to authorize, having regard to the circumstances, that a particular official document shall be made available.

### Art. 3.

The term 'document' includes any representation in writing, any pictorial representation, and any recording which can be read, listened to, or otherwise apprehended only by means of technical aids. A document shall be considered to be official if it is kept by a public

authority, and if, pursuant to Articles 6 or 7, it shall be considered to have been received, or prepared, or drawn up by an authority.

A recording such as referred to in the preceding paragraph shall be considered to be kept by a public authority, if the recording is available to the authority for the purpose of being transcribed in such a manner that it can be read or listened to, or is otherwise apprehensible. The foregoing provision shall not, however, apply to a recording which forms part of a register of persons, if by law, or by a decree, or by a special decision taken by virtue of an act of law, the authority is not entitled to make such transcription. 'Register of persons' shall be understood to mean any register, list, or other notation containing information which concerns an individual and which can be related to that individual.

## Art. 4.

A letter or other communication which is addressed personally to the holder of an office in a public authority shall be considered to be an official document if the document refers to a case or any other matter which rests with that authority, and if the document is not intended for the addressee merely in his capacity as holder of another position.

#### Art. 5.

For the purposes of the present Chapter the Riksdag, the General Church Assembly, and any municipal assembly vested with decisive power shall be on equality with a public authority.

#### Art. 6.

A document shall be considered to have been received by a public authority when it has arrived at such authority or is in the hands of a competent official. Such recording as referred to in the first paragraph of Article 3 shall be considered instead to have been received by the authority when another person has made it accessible to the authority in the manner stated in the second paragraph of Article 3.

Competitive entries, tenders, or other similar documents which, according to an announcement, must be delivered in sealed envelopes shall not be deemed to have been received before the time fixed for their opening.

Measures which are taken solely as part of technical processing or technical storage of a document which a public authority has made available shall not be construed to have the effect that the document has been received by that authority.

#### Art. 7.

A document shall be deemed to have been drawn up by a public authority when it has been dispatched. A document which has not been dispatched shall be deemed to have been drawn up when the matter or case to which it relates has been finally settled by the authority, or, if the document does not relate to a specific matter or case, when it has been finally checked and approved by the authority, or when it has been completed in some other manner.

Notwithstanding the provisions of the preceding paragraph, such documents as are mentioned below shall be deemed to have been drawn up;

- a diary or journal and such register or other list which is drawn up consecutively, when the document has been completed so as to be ready for notation or entry,
- a judgement or other decision which, according to the relevant legislation, must be
  pronounced or dispatched, and minutes or other documents in so far as they relate to
  such judgement or decision when the judgement or decision has been pronounced or
  dispatched,

3. other minutes kept by a public authority and comparable records, when the document has been checked and approved by the authority or has been completed in some other manner; provided, however, that this shall not apply to minutes kept by Committees of the Riksdag or the General Church Assembly, by Auditors of the Riksdag or by Auditors of local authorities, by Government commissions, or by a local authority on a matter dealt with by the authority solely for the purpose of preparing the matter for decision.

## Art. 8.

If a body or agency which forms part of, or is associated to a public authority or similar organ for public administration, has handed over a document to another body or agency in the same administration or has prepared a document for the purpose of such delivery, the document shall not be deemed thereby to have been received or drawn up unless the relevant bodies or agencies act as independent entities in relation to one another.

## Art. 9.

Neither shall a memorandum, which has been prepared in a public authority and which has not been dispatched, after the time when, pursuant to Article 7, it shall be deemed to have been drawn up, be considered to be an official document in that authority, unless it has been taken care of for the purpose of being filed. By 'memorandum' shall be understood any aide-memoire or other notation or recording prepared exclusively for the purpose of preparation or oral presentation of a case or matter, but not in so far as it has added factual information to the relevant case or matter.

Preliminary outlines or drafts of decisions or official communications of a public authority, as well as any other comparable document, which has not been dispatched shall not be deemed to be an official document unless it is taken care of for the purpose of being filed.

# Art. 10

A document which is kept by a public authority solely for purposes of technical processing or technical storage on account of another person shall not be deemed to be an official document in that authority.

### Art. 11

The following documents shall not be considered to be official documents:

- letters, telegrams or other such documents which have been delivered to or drawn up by a public authority solely for the purpose of forwarding a communication,
- announcements or other documents which have been delivered to, or drawn up by, a public authority solely for the purpose of their publication in a periodical which is published under the auspices of the authority,
- 3. printed matter, sound or picture recordings, or other documents which form part of a library or which have been furnished public archives by a private subject solely for the purpose of storage and custody or for research or study purposes, as well as private letters, publications, or recordings which have otherwise been handed over to a public authority solely for such purposes as those referred to above,
- recordings of the contents of such documents as referred to in sub-paragraph 3, if such recording is kept by a public authority where the original document would not be considered to be an official document.

#### Art. 12.

Any official document which may be made available to the public shall be made available, at the place where it is kept, and free of charge, immediately, or as soon as possible, to any

person who desires to have access to the document, in such manner that the document can be read, listened to, or otherwise apprehended. A document may also be copied or reproduced, or used for the purpose of transfer to a sound recording. If a document cannot be made available without such part of it as may not be made available being disclosed, the remaining part of the document shall be made available to the applicant in the form of a transcript or a copy.

A public authority shall be under no obligation to make a document available at the place where the document is kept, if that would meet with considerable difficulties. Neither shall any such obligation arise in respect of a recording such as referred to in the first paragraph of Article 3, if the applicant can, without any considerable inconvenience, have access to the recording at a public authority located in the neighbourhood.

#### Art. 13.

Any person who wishes to have access to an official document shall likewise be entitled for a fixed fee to obtain a transcript or a copy of the document or of that part of it which may be made available. However, a public authority shall be under no obligation to make a recording for electronic data-processing available in any form other than a transcript. Neither shall there be any obligation to produce copies of maps, drawings, or pictures, or of any other such recording as referred to in the first paragraph of Article 3 than has just been mentioned, if that would meet with difficulties and the document can be made available at the place where it is kept.

#### Art. 14.

Any request to have access to an official document shall be made with the public authority where the document is kept.

The request shall be examined and determined by the authority referred to in the preceding paragraph. However, where special reasons so warrant, it may be prescribed in such provision as referred to in the second paragraph of Article 2 that, in application of that provision, the examination and determination shall rest with another authority. As regards a document which is of extreme importance for the security of the Realm it may also be prescribed by a decree that only a particular authority shall be entitled to consider and decide questions of making the document available. In the cases now referred to the request shall immediately be submitted to the competent authority.

#### Art. 15.

If a public authority other than the Riksdag or the Government has rejected a request that an official document be made available, or if such document has been made available under reservations which restrict the applicant's right to disclose its contents or otherwise to make use of it, the applicant may lodge an appeal against the decision. An appeal against a decision by a member of the Government shall be lodged with the Government, and an appeal against a decision of another authority shall be lodged with a court.

In the Act referred to in Article 2 it shall be stipulated it detail how an appeal against such decision as referred to in the preceding paragraph shall be lodged. An appeal of this kind shall always be considered and determined promptly.

The right to lodge appeals against decisions by the Riksdag agencies is governed by special provisions.

## Art. 16.

A notification indicating restrictions of the right to make an official document available may be made only on documents to which such provision as referred to in the second paragraph of Article 2 is applicable. In such a note the applicable provision shall be indicated.

# Freedom of Information Act

[The Freedom of Information Act in the United States was passed in 1966. There were two amendments to it, the first in 1967 and the other in 1974, both clarifying the provisions of the 1966 Act and enlarging the scope of access to official documents.

[We give below in full the 1966 Act and the two amendments, 1967 and 1974.]

# PUBLIC LAW 89-487-1966

#### AN ACT

To amend section 3 of the Administrative Procedure Act, chapter 324. of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), is amended to read as follows:

Sec. 3. Every agency shall make available to the public the following information:

(a) Publication in the Federal Register. Every agency shall separately state and currently publish in the Federal Register for the guidance of the public (A) descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) every amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the Federal Register and not so published. For purpose of this sub-section, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(b) Agency Opinion and Order. Every agency shall, in accordance with published rules, make available for public inspection and copying (A) all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction: Provided, That in every case the justification for the deletion must be fully explained in

writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after the effective date of this Act and which is required by this subsection to be made available or published. No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public may be relied upon, used or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided by this subsection or unless that private party shall have actual and timely notice of the terms thereof.

- (c) Agency Records. Except with respect to the records made available pursuant to subsections (a) and (b), every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records promptly available to any person. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.
- (d) Agency Proceedings. Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection.
- (e) Exemptions. The provisions of this section shall not be applicable to matters that are (1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; (2) related solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential; (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.
- (f) Limitation of Exemptions. Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.
- (g) Private Party. As used in this section, 'private party' means any party other than an agency.
- (h) Effective Date. This amendment shall become effective one year following the date of the enactment of this Act.

  Approved July 4, 1966.

### PUBLIC LAW 90-23-1967

### AN ACT

To amend section 552 of title 5, United States Code, to codify the provisions c. Public Law 89-487.

Be it enacted by the Senate and House of Representatives of the United States of America

in Congress assembled. That section 552 of title 5, United States Code, is amended to read: 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

- (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—
  - (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
  - (B) statements of the general course and method by which its functions are channelled and determined, including the nature and requirements of all formal and informal procedures available;
  - (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
  - (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
  - (E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

- (2) Each agency, in accordance with published rules, shall make available for public inspection and copying
  - (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
  - (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and
  - (C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

- (i) it has been indexed and either made available or published as provided by this paragraph; or
- (ii) the party has actual and timely notice of the terms thereof.

- (3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter *de novo* and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.
- (4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.
  - (b) This section does not apply to matters that are—
  - (1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;
  - (2) related solely to the internal personnel rules and practices of an agency;
  - (3) specifically exempted from disclosure by statute;
  - (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
  - (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
  - (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
  - (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;
  - (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
  - (9) geological and geophysical information and data, including maps, concerning wells.
- (c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

## PUBLIC LAW 93-502-1974

### AN ACT

To amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the fourth sentence of section 552(a) (2) of title 5, United States Code, is amended to read as follows: Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and

required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication.

(b)(1) Section 552(a) (3) of title, 5, United States Code, is amended to read as follows:

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(2) Section 552(a) of title 5, United States Code, is amended by redesignating paragraph (4), and all references thereto, as paragraph (5) and by inserting immediately after paragraph

(3) the following new paragraph:

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter *de novo*, and may examine the contents of such agency records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his

representative. The administrative authority shall take the corrective action that the Commission recommends.

- (G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.
- (c) Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:
- (6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—
  - (i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and
  - (ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.
- (B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of sub-paragraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this sub-paragraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request:
  - (i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
  - (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
  - (iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.
- (C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.
- Sec. 2. (a) Section 552 (b) (1) of title 5, United States Code, is amended to read as follows: (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

- (b) Section 552(b) (7) of title 5, United States Code, is amended to read as follows:
- (7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.
- (c) Section 552 (b) of title 5, United States Code, is amended by adding at the end the following: Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

Sec. 3. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

- (d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include:
  - (1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;
  - (2) the number of appeals made by persons under subsection (a) (6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;
  - (3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each:
  - (4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;
  - (5) a copy of every rule made by such agency regarding this section;
  - (6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and
  - (7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a) (4) (E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

Sec. 4. The amendments made by this Act shall take effect on the ninetieth day beginning after the date of enactment of this Act.

# Privacy Act 1974

[To safeguard personal privacy from the misuse of federal records and to provide individuals access to records concerning them, maintained by the federal agencies, the United States passed the Privacy Act in 1974. We reproduce below the text of the Act.]

An Act to amend title 5, United States Code. by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'Privacy Act of 1974'.

Sec. 2. (a) The Congress finds that:

- (1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;
- (2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;
- (3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;
- (4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and
- (5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

## STATEMENT OF PURPOSE

- (b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to:
- (1) permit an individual to determine what records pertaining to him are collected maintained, used, or disseminated by such agencies;
- (2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;
- (3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;
- (4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the

information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of wilful or intentional

action which violates any individual's rights under this Act.

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

# 552a. RECORDS MAINTAINED ON INDIVIDUALS

(a) Definitions. For purposes of this section:

(1) the term 'agency' means agency as defined in section 552(e) of this title;

(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term 'maintain' includes maintain, collect, use, or disseminate:

(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) Conditions of Disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

- (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;
- (9) to either House of Congress, or. to the extent of matter within its jurisdction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
- (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or
  - (11) pursuant to the order of a court of competent jursidction.
- (c) Accounting of Certain Disclosures. Each agency, with respect to each system of records under its control shall:
- (1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of:
  - (A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and
  - (B) the name and address of the person or agency to whom the disclosure is made;
- (2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;
- (3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and
- (4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.
  - (d) Access to Records. Each agency that maintains a system of records shall:
- (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;
  - (2) permit the individual to request amendment of a record pertaining to him and:
  - (A) not later than 10 days (excluding Saturdays, Sundays, and legal public hol lays) after the date of receipt of such request, acknowledge in writing such receipt; and
  - (B) promptly either-
    - (i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or
    - (ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;
- (3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such

review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled

in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. Each agency that maintains a system of records shall:

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programmes;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual:

- (A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;
- (B) the principal purpose or purposes for which the information is intended to be used;
- (C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (D) of this subsection; and
- (D) the effects on him, if any, of not providing all or any part of the requested information;

## PUBLICATION IN FEDERAL REGISTER

- (4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include:
  - (A) the name and location of the system;
  - (B) the categories of individuals on whom records are maintained in the system;
  - (C) the categories of records maintained in the system;
  - (D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
  - (E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
  - (F) the title and business address of the agency official who is responsible for the system of records;
  - (G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
  - (H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and
  - (I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely and relevant for

agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity:

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

# RULES OF CONDUCT

- (9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;
- (10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and
- (11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.
- (f) Agency Rules. In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall:
- (1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;
- (2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;
- (3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;
- (4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and
- (5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

- (g) (1) Civil Remedies. Whenever any agency:
- (A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection:
- (B) refuses to comply with an individual request under subsection (d) (1) of this section;
- (C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or
- (D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.
- (2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section. the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.
  - (B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.
- (3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.
  - (B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

#### DAMAGES

- (4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or wilful, the United States shall be liable to the individual in an amount equal to the sum of:
  - (A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$ 1,000; and
  - (B) the costs of the action together with reasonable attorney fees as determined by the court.
- (5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date

on which the cause of action arises, except that where an agency has materially and wilfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by resason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

- (h) Rights of Legal Guardians. For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.
- (i) Criminal Penalties. (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, wilfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanour and fined not more than \$5,000.
- (2) Any officer or employee of any agency who wilfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanour and fined not more than \$5,000.
- (3) Any person who knowingly and wilfully requests or obtains any record concerning an individual from an agency under false pretences shall be guilty of a misdemeanour and fined not more than \$5,000.
- (j) General Exemptions. The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is :
  - (1) maintained by the Central Intelligence Agency; or
- (2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (C) of this title, the reasons why the system of records is to be exempted from a provision of this section.

- (k) Specific Exemptions. The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553 (b) (1), (2) and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I) and (f) of this section if the system of records is:
  - (1) subject to the provisions of section 552 (b) (1) of this title;
- (2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal

law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 12;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise

the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (c) of this title, the reasons why the system of records is to

be exempted from a provision of this section.

- (I) Archiva! Records. Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.
- (2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modelled after the requirements relating to records subject to subsections (e) (4) (A) through (G) of this section shall be published in the Federal Register.
- (3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e) (4) (A) through (G) and (e) (9) of this section,
- (m) Government Contractors. When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor

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and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

- (n) Mailing Lists. An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.
- (o) Report on New Systems. Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.
- (p) Annual Report. The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.
- (q) Effect of Other Laws. No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section;
- Sec. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:
- '552a Records about individuals',

immediately below:

- '552. Public information; agency rules, opinions, orders and proceedings.'
- Sec. 5. (a) (1) There is established a Privacy Protection Study Commission (hereinafter referred to as the 'Commission') which shall be composed of seven members as follows:
  - (A) three appointed by the President of the United States,
  - (B) two appointed by the President of the Senate, and
  - (C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen from among persons who, by reason of their knowledge and expertise in any of the following areas—civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government—are well qualified for service on the Commission.

- (2) The members of the Commission shall elect a Chairman from among themselves.
- (3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.
- (4) A quorum of the Commission shall consist of a majority of the members, except the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the

administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

- (5) (A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.
  - (B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.
  - (b) The Commission shall:

(1) make a study of the data banks, automated data processing programmes, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(c) (1) In the course of conducting the study required under subsection (b) (i) of this section, and in its reports thereon, the Commission may research, examine, and analyze:

 (A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programmes and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, licence plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to,

integrate, or centralize information systems and files; and

- (D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.
- (2) (A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel and entertainment reservations; and electronic check processing.
  - (B) The Commission shall include in its examination a study of:
    - (i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;
    - (ii) whether the Internal Revenue Service should be prohibited from transfering individually identifiable data to other agencies and to agencies of State governments;

- (iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a wilful or intentional violation of the provisions of sections 552a (g) (1) (C) or (D) of title 5, United States Code; and
- (iv) whether and how the standards for security and confidentiality of records required under section 552a (c) (10) of such title should be applied when a record is disclosed to a person other than an agency.

### RELIGIOUS ORGANIZATION EXCEPTION

- (C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.
- (3) In conducting such study, the Commission shall:
- (A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;
- (B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;
- (C) examine the standards and criteria governing programmes, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and
- (D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.
- (d) In addition to its other functions the Commission may:
- (1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;
- (2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;
- (3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and
- (4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.
- (e) (1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpoena shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpoenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

- (2) (A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a (o) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.
  - (B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.
  - (3) The Commission shall have the power to:
  - (A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and
  - (B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

- (4) The Commission is authorized:
- (A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization and personnel;
- (B) to enter into contracts or other arrangements or modifications thereof, with any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);
- (C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and
- (D) to take such other action as may be necessary to carry out its functions under this section.
- (f) (1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.
- (2) A member of the Commission other than one to whom paragraph (1) applies shall receive *per diem* at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

- (3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.
- (g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.
- (h) (1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, wilfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanour and fined not more than \$5,000.
- (2) Any person who knowingly and wilfully requests or obtains any record concerning an individual from the Commission under false pretences shall be guilty of a misdemeanour and fined not more than \$5,000.
  - Sec. 6. The Office of Management and Budget shall:
- (1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code as added by section 3 of this Act; and
- (2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.
- Sec. 7 (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.
  - (2) the provisions of paragraph (1) of this subsection shall not apply with respect to:
  - (A) any disclosure which is required by Federal statute, or
  - (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
- (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.
- Sec. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted.
- Sec. 9. There is authorized to be appropriated to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of \$ 1,500,000, except that not more than \$ 750,000 may be expended during any such fiscal year.

Approved December 31, 1974.

# Government in the Sunshine Act 1976

[To associate the public in the decision-making process of the federal government, the United States passed the Sunshine Act in 1976. We give below the full text of the Act].

An Act to provide that meetings of Government agencies shall be open to the public, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'Government in the Sunshine Act'.

## DECLARATION OF POLICY

Sec. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

#### OPEN MEETINGS

Sec. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

### 552b. Open meetings

(a) For purposes of this section:

(1) the term 'agency' means any agency, as defined in section 552 (e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term 'meeting' means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term 'member' means an individual who belongs to a collegial body heading

an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting

of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(1) disclose matters that are (A) specifically authorized under criteria established by an

Executive order to be kept secret in the interests of national defence or foreign policy and (B) in fact properly classified pursuant to such Executive order;

- (2) relate solely to the internal personnel rules and practices of an agency;
- (3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or, (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
  - (5) involve accusing any person of a crime, or formally censuring any person;
- (6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures or, (F) endanger the life or physical safety of law enforcement personnel;
- (8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
  - (9) disclose information the premature disclosure of which would-
  - (A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or
  - (B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or
- (10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.
- (d) (1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a) (1) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all

persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4) (8), (9) (A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e) (1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earliest date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the proceeding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f) (1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion

of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9) (A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

## PUBLIC AVAILABILITY

- (2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes as required by paragraph (1) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.
- (g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.
- (h) (1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgement, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an

injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plantiff only where the court finds that the suit was initiated by the plantiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in

such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(1) This section does not constitute authority to withhold any information from Congress, and does not authorize the losing of any agency meeting or portion thereof required

by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.'

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by

inserting:

552b. Open meetings. immediately below:

552a. Records about individuals.

#### EX PARTE COMMUNICATIONS

Sec. 4 (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law:

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

- (B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;
- (C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:
  - (i) all such written communications:
  - (ii) memoranda stating the substance of all such oral communications; and
  - (iii) all written responses and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;
- (D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and
- (E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge,
- (2) This subsection does not constitute authority to withhold information from Congress.
  - (b) Section 551 of title 5, United States Code, is amended:
  - (1) by striking out 'and' at the end of paragraph (12):
- (2) by striking out the 'act' at the end of paragraph (13) and inserting in lieu thereof 'act; and'; and
  - (3) by adding at the end thereof the following new paragraph:
- (14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.
- (c) Section 556 (d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: 'The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557 (d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur'.

# CONFORMING AMENDMENTS

Sec. 5. (a) Section 410 (b) (1) of title 39, United States Code, is amended by inserting after 'Section 552 (public information),' the words 'section 552a (records about individuals), section 552b (open meetings).'

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(b) Section 552 (b) (3) of title 5, United States Code, is amended to read as follows:

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(c) Subsection (d) of section 10 of the Federal Advisory Committee Act is amended by striking out the first sentence and inserting in lieu thereof of the following: 'Subsections (a) (1) and (a) (3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code'.

#### EFFECTIVE DATE

Sec. 6. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect 180 days after the date of its enactment.

(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment.

Approved September 13, 1976.

#### LEGISLATIVE HISTORY

House Reports: No. 94-880, Pt. I and No. 94-880, Pt. 2, accompanying H.R. 11656 (Comm. on Government Operations) and No. 94-1441 (Comm. of Conference).

Senate Reports. No. 94-354 (Comm. on Government Operations), No. 94-381 (Comm. on Rules and Administration) and No. 94-1178 (Comm. of Conference).

Congessional Record:

Vol. 121 (1975): Nov. 5, 6, considered and passed Senate.

Vol. 122 (1976): July 28, considered and passed House, amended, in lieu of H.R. 11656.

Aug. 31, House and Senate agreed to conference report.

Weekly Compilation of Presidential Documents:

Vol. 12, No. 38 (1976): Sept. 13, Presidential statement.

# Access to Official Information

[Privy Council President Mr. Walter Baker introduced the Federal Government's Freedom of Information Bill in the House of Commons in October 1979. The official release on the occasion gave the following outline of the Bill].

The legislation is based on the principle that government information should be available to the people of Canada, that necessary exceptions to that principle should be limited and narrowly defined and that disputes over the application of those exceptions should be resolved independently of Government.

It translates those principles into law by providing access to information except for precisely defined exemptions and judicial review of Government decisions to withhold information.

Implementation of Freedom of Information Legislation will make Canada the first Federal Government with a British parliamentary system to open up Government records to the public by law.

In the spirit of the new legislation, Mr. Baker also released today the Cabinet discussion papers on which the Freedom of Information Bill is based. Such discussion papers will be available routinely under Freedom of Information.

Under the present system, there is no obligation on Government to release any information in its possession. Such information is normally withheld unless there is a positive decision to disclose it. Freedom of Information legislation will reverse that system. All Government information, except that specifically defined, must be disclosed when requested.

Four areas of information held by the Government are exempted from disclosure. Within those areas the kinds of information to be exempted are narrowly defined.

### OBLIGATIONS OF GOVERNMENT

The first area is obligations of government where the government could not carry out its responsibilities under the glare of publicity. This includes:

- (i) information obtained under international or federal-provincial agreements for confidentiality;
- (ii) information which could reasonably be expected to affect adversely federalprovincial negotiations;
- (iii) information reasonably expected to be injurious to international relations, defence, and efforts aimed towards detecting, preventing or suppressing subversive or hostile activities as defined in the Act;
- (iv) defined classes of information harmful to law enforcement responsibilities;
- (v) information relating to the safety of individuals;
- (vi) information which would have a substantial adverse affect on economic interests of Canada,

#### PROTECTION OF PRIVACY

The second area is personal information. Since freedom of information must be balanced

against protection of an individual's privacy, this legislation denies all access to personal information except where it relates to duties of government employees. An individual's right of access to his or her own file is now controlled under Part IV of the Canadian Human Rights Act. To both increase that access and further protect access by third parties, the government will soon propose amendments to that Act and remove it from the Human Rights Act.

# FINANCIAL, COMMERCIAL, SCIENTIFIC AND TECHNICAL

The third area is financial, commercial, scientific and technical information which could divulge trade secrets, harm the competitive position of companies or interfere with commercial contract negotiations. For the most part this includes information provided to the government by companies with the understanding it be kept confidential.

#### OPERATIONS OF GOVERNMENT

The fourth area concerns the operations of government and is intended to protect information needed for the decision-making process of government. It includes:

- (i) cabinet records other than discussion papers;
- (ii) policy advice and recommendations from public servants;
- (iii) government testing procedures;
- (iv) legal opinions generated within the government;
- (y) existing statutory restrictions on disclosing information.

Ministers may override any of the above exceptions but three: information obtained under an international or federal-provincial agreement of confidentiality; personal information; or statutory restrictions.

In every case when exemptable and non-exemptable information is included in the same document, the non-exemptable information will be made available when it is reasonably practicable to do so.

The following is a sample list of the kind of government documents that would be released on request under freedom of information:

- -Factual material of all kinds;
- -Cabinet discussion papers and some records of cabinet decisions;
- -Draft Bills after introduction and drafting instructions;
- -Consultants' reports;
- -Programme evaluations and assessments;
- -Documents stating and explaining policies;
- -Documents explaining decisions affecting persons;
- -Test reports, environmental impact statements, product testing results;
- -Technical and scientific research results and results of field research;
- -Statistical surveys:
- -Opinion survey results;
- -Feasibility studies:
- -Cost figures and estimates;
- -Field reports, reports on operations, documents on the administration of Acts and of programmes;
- -Minutes of discussions with industry and industry briefs;
- -Internal government directives and manuals;
- -Administrative guidelines and instructions;

- -Ruling on interpretations;
- -Organisation charts;
- -Job descriptions;
- -Salary ranges of officials;
- -Details of contracts;
- —Terms of reference for any work contracted out or for studies of departmental programmes.

The legislation calls for a two-tier review procedure of government refusals to disclose information under the Act. Any refusal could first be referred to an information commissioner with ombudsman-like powers to investigate the complaint and make recommendations to the department involved. The information commissioner could report to Parliament any time. If the government still refused to disclose the information, the applicant could appeal to the federal court for a ruling.

Both the information commissioner and the court would be empowered to look at any documents involved. This is made possible by repealing section 41 of the Federal Court Act which enabled a minister to prohibit production of any document claimed to be injurious to international relations, national defence, national security or to be a confidence of cabinet by affidavit.

The information commissioner and the court would determine if ministers were, in fact, proper in claiming exemptions under the Act when withholding information.

The new Act would operate in the following manner:

- The government would provide ready access to publications explaining the kind of
  information that is available in the files of government institutions covered by the
  legislation.
- 2. An individual or corporation could write to a government institution to request records, describing them as clearly as possible and including an application fee.
- 3. Departmental officials would look for and find the records, and consider whether they are exemptable under the Act. The decision would be communicated to the applicant within 30 days normally. The minister would be empowered to waive exemptions in most cases.
- 4. If unsatisfied by the response the applicant could take the case to an information commissioner for review. The information commissioner would look into the case and make a recommendation to both the minister and the applicant.
- 5. If still unsatisfied, the applicant could take the case to the federal court for judicial review and decision.

The government estimates the cost of the programme at between five and ten million dollars a year, depending on the number of requests for information under the Act.

# FREEDOM OF INFORMATION BILL

Purpose—(Clause 2)

- -Government information will be broadly available to the people of Canada.
- -Necessary exceptions will be limited and narrowly defined.
- —Disputes over the application of those exceptions will be resolved independently of the government.

# ACCESS TO INFORMATION

—Government departments and agencies will provide descriptions of the kind of information in their control (Clause 5)

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- —Applicants requesting information apply to the appropriate department or agency. (Clause 6)
- —Government institutions normally have thirty days to either provide the information or inform the applicant why it can't be provided. (Clauses 7-10)
- —Fees shall be paid on application, for reproducing records and for prolonged or difficult searches although they may be waived. (Clause 11)

# EXEMPTIONS FROM ACCESS (CLAUSES 13-25)

- —Four areas of information held by the government may be exempted from disclosure. Within those areas, the kinds of information to be exempted are defined. Most of the exemptions can be waived by the appropriate minister:
- 1. Obligations of Government (Clauses 13-18):
  - —Information obtained in confidence under international or federal-provincial agreements or arrangements. (Clause 13)
  - -Information prepared for federal-provincial negotiations. (Clause 14)
  - -Information relating to international relations and defence as defined. (Clause 15)
  - -Law enforcement. (Clause 16)
  - -Safety of individuals. (Clause 17)
  - -Economic interests of Canada. (Clause 18)
- 2. Personal Information (Clause 19)
- 3. Financial, Commercial, Scientific and Technical Information (Clause 20)
- 4. Operations of Government (Clauses 21-25)
  - —Cabinet records. (Clause 21)
  - -Advice and recommendations from public servants. (Clause 22)
  - —Government testing procedures. (Clause 23)
  - -Legal opinions of government employees. (Clause 24)
  - —Statutory restrictions on disclosure. (Clause 25)

### REVIEW PROCEDURE

- —Government refusal to disclose information may be referred to the information commissioner for investigation. (Clauses 29-31)
- —The information commissioner may review complaints, see documents, recommend action and report directly to parliament. (Clauses 32-39)
- —Applicants may appeal government decisions to withhold information to the federal court for a decision. (Clauses 40-48)

## OTHER CHANGE

-Repeal of Section 41 of the Federal Court Act. (Clause 70)

# Freedom of Information Bill

[The Federal Government's Freedom of Information Bill was introduced in the House of Commons in October 1979. The following is the text of the Bill.]

An Act to extend the present laws of Canada that provide access to information under the control of the Government of Canada and to amend the Canada Evidence Act, the Federal Court Act and the Statutory Instruments Act.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enact as follows:

#### SHORT TITLE

1. This Act may be cited as the Freedom of Information Act.

#### PURPOSE OF ACT

2. The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in government records recognizing the principle that government information should be available to the public and recognizing that necessary exceptions to the principle should be limited and specific and that the application of those exceptions should be reviewed independently of government.

#### INTERPRETATION

- 3. In this Act,
- "designated Minister", in relation to any provision of this Act, means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council to act as the Minister for the purposes of that provision;
- "government institution" means any department or ministry of state of the Government of Canada listed in the schedule and any board, commission, body or office listed in the schedule;
- "head", in respect of a government institution, means
- (a) in the case of a department or ministry of state listed in the schedule, the member of the Queen's Privy Council for Canada presiding over that institution, or
- (b) in any other case, the person designated by order in council pursuant to this paragraph and for the purposes of this Act to be the head of that institution;
- "Information Commissioner" means the Commissioner appointed under section 49
- "record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording,

videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof.

# ACCESS TO GOVERNMENT RECORDS

Right of Access

- 4. Subject to this Act, every person who is
- (a) a Canadian citizen,
- (b) a permanent resident within the meaning of the Immigration Act, 1976, or
- (c) a corporation incorporated by or under a law of Canada or a province

has a right to and shall, on request, be given access to any record under the control of a government institution.

Information about Government Institutions

- 5. (1) The designated Minister shall cause to be published, on a periodic basis not less frequently than once each year, a publication containing
  - (a) a description of the organization and responsibilities of each government institution, including details on the programmes and functions of each division or branch of each government institution.
  - (b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act; and
  - (c) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent.
- (2) The designated Minister shall cause the publication referred to in subsection (1) to be made available throughout Canada in conformity with the principle that every person is entitled to reasonable access thereto in order to be informed of the contents thereof.

Requests for Access

- 6. A request for access to a record under this Act shall be made in writing to the government institution that has control of the record and shall provide sufficient detail to enable an experienced employee of the institution to identify the record.
- 7. Where access to a record is requested under this Act, the head of the government institution to which the request is made shall, subject to sections 8, 9 and 11, within thirty days after the request is received,
  - (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
  - (b) if access is to be given, give the person who made the request access to the record or part thereof.
- 8. (1) Where a government institution receives a request for access to a record under this Act that the head of the institution considers should more appropriately have been directed to another government institution that has a greater interest in the record, the head of the institution may, within fifteen days after the request is received, transfer the request to the other government institution, in which case the head of the institution transferring the request shall give written notice of the transfer to the person who made the request.
- (2) For the purposes of section 7, where a request is transferred under subsection (1), the request shall be deemed to have been made to the government institution to which it was

transferred on the day the government institution to which the request was originally made received it.

- (3) For the purposes of subsection (1), a government institution has a greater interest in a record if
  - (a) the record was originally produced in the institution; or
  - (b) in the case of a record not originally produced by a government institution, the institution was the first institution to receive the record or a copy thereof.
- 9. The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if
  - (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution, or
  - (b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit

by forthwith giving notice of the extension and the length of the extension to the person who made the request, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

- 10. (1) Where the head of a government institution refuses to give access to a record or a part of a record requested under this Act, the head of the institution shall state in the notice given in respect of the record under paragraph 7(a)
  - (a) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the record existed;
     and
  - (b) that the person who made the request has a right to make a complaint to the Information Commissioner about the refusal,
- (2) The head of a government institution is not required under subsection (1) to indicate whether a record requested under this Act exists.
- (3) Where the head of a government institution fails to give access to a record or part of a record requested under this Act within the time limits set out in this Act the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access to the record.
- 11. (1) Subject to this section, a person who makes a request for access to a record under this Act shall pay
  - (a) at the time the request is made, such application fee, not exceeding twenty-five dollars, as may be prescribed by regulation toward the costs of search for or production of the record and the costs of reviewing the record; and
  - (b) before any copies are made, a reasonable fee, determined by the head of the government institution that has control of the record, reflecting the cost of reproducing the record or part thereof.
- (2) The head of a government institution to which a request for access to a record is made under this Act may, before giving access to the record, require, in addition to the fee payable under paragraph (1)(a), payment of an amount, calculated in the manner prescribed by regulation, for every hour in excess of five hours that is reasonably required to search for, produce or review the record.

- (3) Where the head of a government institution requires payment of an amount under subsection (2) in respect of a request for a record, the head of the institution may require that a reasonable proportion of that amount be paid as a deposit before the search, production or review of the record is undertaken.
- (4) Where the head of a government institution requires a person to pay an amount under subsection (2) or (3), the head of the institution shall
  - (a) give written notice to the person; and
  - (b) in the notice, state that the person has a right to make a complaint to the Information Commissioner about the amount required.
- (5) The head of a government institution to which a request for access to a record is made under this Act may, in his discretion, waive the requirement to pay a fee or other amount or a part thereof under this section or may refund a fee or other amount or a part thereof paid under this section.

## Form of Access

- 12. (1) Subject to subsection (2), a person who is given access to a record or a part thereof may, at the option of the person,
  - (a) be given a copy of the record or part thereof; or
  - (b) examine the record or part thereof.
  - (2) No copy of a record or part thereof shall be given under this Act where
  - (a) it would not be reasonably practicable to reproduce the record or part thereof by reason of the length or nature of the record; or
  - (b) the making of such copy would involve an infringement of copyright other than copyright of Her Majesty in right to Canada.
- (3) Notwithstanding any other Act, there is no obligation to give access to a record under this Act in any language other than that in which it exists but where a record exists in both official languages of Canada, as declared in the *Official Language Act*, a person who is given access shall be given access in the official language of his choice.

# **EXEMPTIONS**

## Obligations of Government

- 13. The head of a government institution shall refuse to disclose a record requested under this Act where the record contains information that was obtained in confidence under an agreement or arrangement
  - (a) between the Government of Canada and the government of a foreign state or an international organization of states; or
  - (b) between the Government of Canada and the government of a province.
- 14. The head of a government institution may refuse to disclose a record requested under this Act where the record contains information the disclosure of which could reasonably be expected to affect adversely federal-provincial negotiations.
- 15. (1) The head of a government institution may refuse to disclose a record requested under this Act where the record contains information the disclosure of which could reasonably be expected to be injurious to the conduct by Canada of international relations, the

defence of Canada or any state allied or associated with Canada or the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities, including, without restricting the generality of the foregoing,

- (a) information, assessments and plans concerning military tactics or strategy including exercises and operations aimed at preparing for hostilities or detecting, preventing or suppressing hostile or subversive activities;
- (b) information concerning the military characteristics, capabilities or deployment of weapons or defence equipment, including any articles being designed, developed, produced or considered for use as weapons or defence equipment;
- (c) information concerning the military characteristics, capabilities or role of any military force or any defence establishment, unit or personnel;
- (d) intelligence obtained or prepared for
  - (i) the defence of Canada or any state allied or associated with Canada, or
  - (ii) the detection, prevention or suppression of subversive or hostile activities;
- (e) intelligence respecting foreign states, international organizations of states or citizens of foreign states the release of which would interfere with the formulation of policy of the Government of Canada or the conduct by Canada of international relations;
- (f) information on methods of collecting, assessing or handling intelligence referred to in paragraphs (d) and (e) and information on sources of such intelligence;
- (g) information on the positions of the Government of Canada, governments of foreign states or international organizations of states the release of which would interfere with international negotiations;
- (h) diplomatic correspondence exchanged with foreign states or international organisations of states, except correspondence the disclosure of which is consented to by the states or organizations involved; and
- (i) information relating to the communications systems of Canada and other states used
  - (i) for the conduct by Canada of international relations,
  - (ii) for the defence of Canada or any state allied or associated with Canada, or
  - (iii) in relation to the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities.
- (2) In this section,
- (a) "the defence of Canada or any state allied or associated with Canada" includes the efforts of Canada toward detecting, preventing or suppressing activities of any person, group of persons or foreign state directed toward actual or potential attack or other hostile acts against Canada or any state allied or associated with Canada, and
- (b) "subversive or hostile activities" means
  - (i) espionage or sabotage.
  - (ii) activities of any person or group of persons directed toward the commission of terrorist acts in or against Canada or other states.
  - (iii) activities directed toward accomplishing governmental change within Canada or other states by the use of or the encouragement of the use of force, violence or any criminal means,
  - (ii) activities directed toward gathering intelligence relating to Canada or any state allied or associated with Canada, and
  - (v) activities directed toward threatening the safety of Canadians, employees of the Government of Canada or property of the Government of Canada.

- 16. The head of a government institution may refuse to disclose a record requested under this Act where the record contains
  - (a) information obtained or prepared by any government institution or part of a government institution that is an investigative body specified in the regulations in the course of investigations pertaining to
    - (i) the detection, prevention or suppression of crime, or
    - (ii) the enforcement of any law of Canada or a province;
  - (b) information relating to investigative techniques or plans for specific lawful investigations: or
  - (c) any other information the disclosure of which would be injurious to law enforcement, the conduct of lawful investigations or the security of penal institutions.
- 17. The head of a government institution may refuse to disclose a record requested under this Act where the record contains information the disclosure of which could reasonably be expected to threaten the safety of an individual.
- 18. The head of a government institution may refuse to disclose a record requested under this Act where the record contains information the disclosure of which would have a substantial adverse effect on the economic interests of Canada including without restricting the generality of the foregoing.
  - (a) information relating to the currency, coinage or legal tender of Canada;
  - (b) information concerning a contemplated change in the rate of bank interest, tariff
    rates, taxes or duties or concerning the sale or acquisition of land or property;
    or
  - (c) information relating to the regulation or supervision of financial institutions.

## Personal Information

- 19. (1) The head of a government institution shall refuse to disclose a record requested under this Act where the record contains personal information respecting an identifiable individual including, without restricting the generality of the foregoing,
  - (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual;
  - (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
  - (c) any identifying number, symbol or other particular assigned to the individual;
  - (d) the address, fingerprints or blood type of the individual;
  - (e) the personal opinions or views of the individual;
  - (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence, except correspondence and replies the disclosure of which are consented to by the individual;
  - (g) the views or opinions of another person in respect of the individual; and
  - (h) the name of the individual where it appears in a record together with other personal information relating to the individual or where the disclosure of the name itself would reveal information in respect of the individual.
  - (2) Subsection (1) does not apply in respect of the following classes of information
  - (a) information in respect of an individual who is or was an officer or employee of a

government institution that relates to the position or functions of the individual including.

- (i) the fact that the individual is or was an officer or employee of the government institution.
- (ii) the title, business address and telephone number of the individual.
- (iii) the classification, salary range and responsibilities of the position held by the individual,
- (iv) the name of the individual on a document prepared by the individual in the course of employment, and
- (v) the personal opinions or views of the individual given in the course of employment except where they are given in respect of another individual;
- (b) the terms of any contract of or for personal services under which an individual performs services for a government institution, and the opinions or views of the individual given in the course of the performance of such services except where they are given in respect of another individual; and
- (c) information relating to any discretionary benefit conferred on an individual, including the name of the individual and the exact nature of the benefit.

### Financial, Commercial, Scientific and Technical Information

- 20. (1) The head of a government institution may refuse to disclose a record requested under this Act where the record contains financial, commercial, scientific or technical information
  - (a) the disclosure of which could reasonably be expected to result in information of the same kind no longer being supplied to the government institution, where the information was supplied to a government institution on the basis that the information be kept confidential and where it is in the public interest that information of that type continue to be supplied to the government institution;
  - (b) the disclosure of which could reasonably be expected to prejudice significantly the competitive position, or interfere significantly with contractual or other negotiations, of a person, group of persons, organization or government institution; or
  - (c) the disclosure of which could reasonably be expected to result in undue financial loss or gain by a person, group of persons, organization or government institution.
- (2) The head of a government institution may not, pursuant to subsection (1), refuse to disclose a record under the control of the institution that contains the results of product or environmental testing unless
  - (a) the testing was done by the government institution as a service and for a fee; or
  - (b) the head of the institution believes, on reasonable grounds, that the results are misleading.

### Operations of Government

- 21. (1) The head of a government institution shall refuse to disclose a record requested under this Act if it falls within any of the following classes:
  - (a) records containing proposals or recommendations submitted, or prepared for submission, by a Minister of the Crown to Council.
  - (b) records containing agendas of Council or recording deliberations or decisions of Council;
  - (c) records used for or reflecting consultations among Ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

- (d) records containing briefings to Ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of consultations referred to in paragraph (c);
- (e) draft legislation before its introduction in Parliament; and
- (f) records containing background explanations, analyses of problems or policy options submitted or prepared for submission by a Minister of the Crown to Council for consideration by Council in making decisions, before such decisions are made.
- (2) The head of a government institution shall refuse to disclose a record requested under this Act where the record contains information about the contents of any record referred to in subsection (1).
  - (3) Subsections (1) and (2) do not apply in respect of any record
  - (a) where disclosure of the record is authorized by the Prime Minister of Canada; or
  - (b) where a request is made under this Act for access to the record more than twenty years after the record came into existence.
- (4) For the purposes of this section, "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.
- 22. (1) The head of a government institution may refuse to disclose a record requested under this Act where the record contains advice or recommendations developed by a government institution or a Minister of the Crown or an account of the process of consultation and deliberation in connection therewith, if the record came into existence less than twenty years prior to the request.
- (2) Subsection (1) does not apply in respect of a record or a part of a record that contains an account of, or a statement of the reasons for a decision made in the exercise of a discretionary power or in the exercise of an adjudicative function affecting the rights of a person.
- (3) The head of a government institution may not, pursuant to subsection (1), refuse to disclose a record under the control of the institution that contains the results of product or environmental testing unless
  - (a) the testing was done by the government institution as a service and for a fee; or
  - (b) the head of the institution believes, on reasonable grounds, that the results are misleading.
- 23. The head of a government institution may refuse to disclose a record requested under this Act where the record contains information relating to testing or auditing procedures or techniques or details of specific tests to be given or audits to be conducted if such disclosure would prejudice the use or results of particular tests or audits.
- 24. The head of a government institution may refuse to disclose a record requested under this Act where the record contains information that is subject to a solicitor-client privilege.

# Statutory Restrictions

- 25. The head of a government institution shall refuse to disclose a record requested under this Act where the record contains information that is required under any other Act of Parliament to be withheld from the general public or from any person not legally entitled thereto if the Act of Parliament
  - (a) provides that the requirement to withhold information be exercised in such a manner as to leave no discretion in the matter; or
  - (b) establishes particular criteria for withholding information or refers to particular types of information to be withheld.

Severability

26. Notwithstanding any other provision of this Act, where a request is made to a government institution for access to a record that the head of a the institution may refuse to disclose under this Act by reason of information contained in the record, the head of the institution shall disclose any part of the record that does not contain any such information and can reasonably be severed from any part containing such information.

#### General

- 27. The head of a government institution may refuse to disclose a record or a part of a record under the control of the institution if the head of the institution believes on reasonable grounds that the material in the record or part thereof will be published by the Government of Canada within ninety days from the time the request is made.
- 28. The head of a government institution may, during the first year after the coming into force of this Act, refuse to disclose a record under the control of the institution that was in existence more than five years before the coming into force of this Act where, in the opinion of the head of the institution, to comply with a request for the record would unreasonably interfere with the operations of the government institution.

#### **COMPLAINTS**

- 29. (1) Subject to this Act, the information Commissioner shall receive and investigate complaints
  - (a) from persons who have been refused access to a record or part of a record requested under this Act:
  - (b) from persons who have been required to pay an amount under subsection 11(2) or (3) that they consider unreasonable;
  - (c) from persons who have requested access to records in respect of which time limits have been extended pursuant to subsection 9(1) where they consider the extension unreasonable; or
  - (d) in respect of any other matter relating to requesting or obtaining access to records under this Act.
- (2) Nothing in this Act precludes the Information Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorized.
- (3) Where the Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, the Commissioner may initiate a complaint in respect thereof.
- 30. A complaint under this Act shall be made to the Information Commissioner in writing unless the Commissioner authorizes otherwise and shall be made within one year from the time when the request for the record in respect of which the complaint is made was received.
- 31. (1) The Information Commissioner may refuse to investigate or may cease to investigate any complaint if, in the opinion of the Commissioner,
  - (a) the complaint is trivial, frivolous or vexatious; or
  - (b) having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.
  - (2) Where the Information Commissioner refuses to investigate or ceases to investigate

a complaint, the Commissioner shall inform the complainant of that fact with reasons therefor.

#### INVESTIGATIONS

- 32. Before commencing an investigation of a complaint under this Act, the Information Commissioner shall notify the head of the government institution concerned of the intention to carry out the investigation and shall inform the head of the institution of the substance of the complaint.
- 33. Subject to this Act, the Information Commissioner may determine the procedure to be followed in the performance of any duty or function of the Commissioner under this Act.
- 34. (1) Every investigation by the Information Commissioner under this Act shall be conducted in private.
- (2) In the course of an Investigation by the Information Commissioner under this Act, the person who made the complaint under investigation and the head of the government institution concerned shall be given an opportunity to make representations to the Commissioner, but no one is entitled as of right to be present during, to have access to or to comment on representations made to the Commissioner by any other person.
- 35. (1) The Information Commissioner has, in relation to the carrying out of the investigation of any complaint under this Act, power
  - (a) to summon and enforce the appearance of persons before the Information Commissioner and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
  - (b) to administer oaths;
  - (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Information Commissioner sees fit, whether or not such evidence or information is or would be admissible in a court of law;
  - (d) to enter any premises occupied by any government institution on complying with any security requirements of the institution relating to the premises;
  - (e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Information Commissioner under this Act as the Commissioner sees fit; and
  - (f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.
- (2) The Information Commissioner may, during the investigation of any complaint under this Act, examine any record or other document or thing under the control of a government institution, and no information may be withheld from the Commissioner by any person on grounds of public interest or on any other grounds.
- (3) Except in a prosecution of a person for an offence under section 122 of the *Criminal Code* (false statements in extra-judicial proceedings) in respect of a statement made under this Act, in a prosecution for an offence under this Act or in a review before the Federal Court—Trial Division under this Act or an appeal therefrom, evidence given by a person in proceedings under this Act and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceedings.
- (4) Any person summoned to appear before the Information Commissioner pursuant to this section is entitled in the discretion of the Commissioner to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court of Canada.

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- (5) Any document or thing produced pursuant to this section by any person or government institution shall be returned by the Information Commissioner within ten days after a request is made to the Commissioner by that person or government institution, but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section.
- 36. (1) If, on investigating a complaint in respect of a record under this Act, the Information Commissioner finds that the complaint is well-founded, the Commissioner shall provide to the head of the government institution that has control of the record a report containing
  - (a) the findings of the investigation and any recommendations that the Commissioner considers appropriate; and
  - (b) where appropriate, a request that, within a time specified therein, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.
- (2) The Information Commissioner shall, after investigating a complaint under this Act, report to the complainant the results of the investigation, but where, pursuant to paragraph (1)(b), a notice has been requested of action taken or proposed to be taken in relation to the recommendation of the Commissioner arising out of the complaint, no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the Commissioner.
- (3) Where, pursuant to paragraph (1) (b), a notice has been requested of action taken or proposed to be taken in relation to recommendations of the Information Commissioner arising out of a complaint and no such notice is received by the Commissioner within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will not be taken in a reasonable time, the Commissioner shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.
- (4) Where, following the investigation of a complaint relating to a refusal to give access to a record requested under this Act, access is not given to the complainant, the Investigation Commissioner shall inform the complainant that the complainant has the right to apply to the Federal Court—Trial Division for a review of the matter investigated.

# REPORTS TO PARLIAMENT

- 37. The Information Commissioner shall, within three months after the 31st day of December in each year, make a report to Parliament on the activities of the office during that year
- 38. (1) The Information Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Information Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 37.
- (2) Any report made pursuant to subsection (1) that relates to an investigation under this Act shall be made only after the procedures set out in section 36 have been followed in respect of the investigation.
- 39. Every report to Parliament made by the Information Commissioner under section 37 or 38 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.

# REVIEW BY THE FEDERAL COURT

- 40. Any person who has been refused access to a record or part of a record requested under this Act may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Federal Court—Trial Division for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 36(2) or within such further time as the Court may, either before or after the expiry of those forty-five days, fix or allow.
  - 41. The Information Commissioner may
  - (a) apply to the Court, within the time limits prescribed in section 40, for a review of any refusal to disclose a record or part of a record requested under this Act in respect of which an investigation has been carried out by the Information Commissioner, if the Commissioner has the consent of the person who requested access to the record;
  - (b) appear before the Court on behalf of any person who has applied for a review under section 40;
  - (c) intervene in any review applied for under section 40; or
  - (d) with leave of the Court, appear as a party to any review applied for under section 40.
- 42. (1) An application made under section 40 or 41 shall be heard and determined in a summary way.
- (2) Subject to this Act, the Federal Court Act and the Federal Court Rules applicable to motions before the Court apply in respect of applications made under section 40 or 41 except as varied by special rules made in respect of such applications pursuant to section 46 of the Federal Court Act.
- 43. (1) In any proceedings before the Court arising from an application under section 40 or 41, the Court shall take every reasonable precaution, including, when appropriate, receiving representations *ex parte and* conducting hearings *in camera*, to avoid the disclosure by the Court or any other person of
  - (a) any information contained in a record the disclosure of which may be refused under this Act by reason of the class of records into which it falls; or
  - (b) any information on the basis of which the disclosure of a record or part of a record may be refused under this Act.
- (2) The Court may disclose to the appropriate authority information relating to an offence against any law of Canada or a province on the part of any officer or employee of a government institution, if in the opinion of the Court there is substantial evidence thereof.
- 44. In any proceedings before the Court arising from an application under section 40 or 41, the burden of establishing that access to a record or part of a record requested under this Act may be refused shall be on the government institution concerned.
- 45. Where the Court determines that the head of a government institution is not entitled to refuse to disclose a record or part of a record requested under this Act, the Court shall order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.
- 46. Any application under section 40 or 41 relating to a record or part of a record that the head of a government institution has refused to disclose in accordance with paragraph 13(a) or section 15 shall, on the request of the head of the institution, be heard and determined by three judges of the Court.
  - 47. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the

Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

- (2) Where the Court is of the opinion that an application for review under section 40 or 41 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.
- 48. For the purposes of sections 41 to 47, "Court" means the Federal Court—Trial Division.

## OFFICE OF THE INFORMATION COMMISSIONER

Information Commissioner

- 49. (1) The Governor in Council shall, by commission under the Great Seal, appoint an Information Commissioner after approval of the appointment by resolution of the Senate and House of Commons.
- (2) Subject to this section, the Information Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons.
- (3) The Information Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.
- (4) The information Commissioner ceases to hold office on attaining the age of sixty-five years.
- (5) Notwithstanding subsection (4), where the Governor in Council is of the opinion that it would be in the public interest for the Information Commissioner to continue to hold office beyond the age of sixty-five years, the Governor in Council may appoint the Commissioner for one further term, not exceeding five years, commencing at the time the Commissioner attains the age of sixty-five years.
- (6) In the event of the absence or incapacity of the Information Commissioner, or if the office of Information Commissioner is vacant, the Governor in Council may appoint another qualified person to hold office instead of the Commissioner for a term not exceeding six months, and that person shall, while holding such office, have all of the powers, duties and functions of the Information Commissioner under this or any other Act of Parliament and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.
- 50. (1) The Information Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Information Commissioner under this or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.
- (2) The Information Commissioner shall be paid a salary equal to the salary of the Chief justice of the Federal Court of Canada, including any additional salary authorized by section 20 of the *Judges Act*, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this or any other Act of Parliament.
- (3) The provision of the Public Service Superannuation Act, other than those relating to tenure of office, apply to the Information Commissioner, except that a person appointed as Information Commissioner from outside the Public Service, as defined in the Public Service Superannuation Act, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the Diplomatic Service (Special) Superannuation Act, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Information Commissioner from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.
- (4) The Information Commissioner is deemed to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made under section 7 of the Aeronautics Act.

Staff

51. (1) Such officers and employees as are necessary to enable the Information Commissioner to perform the duties and functions of the Commissioner under this or any other Act of Parliament shall be appointed in accordance with the Public Service Employment Act.

(2) The Information Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

Delegation

- 52. (1) Subject to subsection (2), the Information Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitation as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this Act except the power to delegate under this section and the powers, duties or functions set out in sections 36, 37 and 38.
- (2) The Information Commissioner may not delegate the investigation of any complaint resulting from a refusal by the head of a government institution to disclose a record or a part thereof pursuant to paragraph 13(a) or section 15 except to one of a maximum of two officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting such investigations.

### General

53. The principal office of the Information Commissioner shall be in the National Capital Region described in the schedule to the National Capital Act.

54. For the purpose of any investigation by the Information Commissioner under this or any other Act of Parliament, any information with respect to a person or an association of persons that is obtained under or in the course of the administration of any Act of Parliament may, notwithstanding any privilege established under such Act, on the request of the Commissioner or any person acting on behalf or under the direction of the Commissioner, be communicated to the Commissioner or such other person, and the Commissioner and any person acting on behalf or under the direction of the Commissioner is entitled to inspect or have access to any statement or other writing containing any such information.

55. The Information Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this or any other Act of Parliament shall, with respect to access to and the use of such information, comply with any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of such information.

56. Subject to this Act, the Information Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

57. (1) The Information Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information that, in the opinion of the Commissioner, is necessary to

(a) carry out an investigation under this Act; or

- (b) establish the grounds for findings and recommendations contained in any report under this Act.
- (2) The Information Commissioner may disclose to the appropriate authority information relating to an office against any law of Canada or a province on the part of any officer

or employee of a government institution if in the opinion of the Commissioner thereis substantial evidence thereof.

- 58. In carrying out an investigation under this Act and in any report made to Parliament under section 37 or 38, the Information Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,
  - (a) any information contained in a record the disclosure of which may be refused under this Act by reason of the class of record into which it falls; or
  - (b) any infomation on the basis of which a record or a part of a record may be refused under this Act.
- 59. The Information Commissioner or any person acting on behalf or under the direction of the Commissioner is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties to founctions under this Act during an investigation, in any proceeding other than a prosecution for an offence under this Act, an offence under section 122 of the *Criminal Code* (false statements in extra-judicial proceedings) in respect of a statement made under this Act or in a review before the Federal Court—Trial Division under this Act or an appeal thereform.
- 60. (1) No criminal or civil proceedings lie against the Information Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.
  - (2) For the purposes of any law relating to libel or slander,
  - (a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation by or on behalf of the Information Commissioner under this Act is privileged; and
  - (b) any report made in good faith by the Information Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

#### **OFFENCES**

- 61. (1) No person shall obstruct the Information Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.
- (2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

### GENERAL

- 62. This Act does not apply to
- (a) published material or material available for purchase by the public;
- (b) Library or museum material made or acquired and presented solely for reference or exhibition purposes; or
- (c) material placed in the Public Archives by or on behalf of persons or organizations other than government institutions.

- 63. The designated Minister shall
- (a) cause to be kept under review the manner in which records under the control of
  government institutions are maintained and managed to ensure compliance with the
  provisions of this Act and the regulations relating to access to records;
- (b) prescribe such forms as may be required for the operation of this Act and the regulations; and
- (c) cause to be prepared and distributed to government institutions guidelines concerning the operation of this Act and the regulations.
- 64. The head of a government institution may by order designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act specified in the order.
- 65. Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against the head of any government institution, or against any person acting on behalf or under the direction of the head of a government institution, and no proceedings lie against the Crown, for the disclosure in good faith of any record or any part thereof pursuant to this Act or for any consequences that flow from such disclosure.
- 66. (1) The administration of this Act shall be reviewed on a permanent basis by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established by Parliament for that purpose.
- (2) The committee designated or established by Parliament for the purposes of subsection (1) shall, within three years after the coming into force of this Act, undertake a comprehensive review of the provisions and operation of this Act, and shall forthwith submit a report to Parliament thereon including a statement of any changes the Committee would recommend.
  - 67. This Act is binding on Her Majesty in right of Canada.
  - 68. (1) The Governor in Council may make regulations
  - (a) prescribing a fee for the purpose of paragraph 11(1)(a) and the manner of calculating an amount payable for the purpose of subsection 11(2); and
  - (b) specifying investigative bodies for the purpose of paragraph 16(a).
- (2) The Governor in Council may, by order, amend the schedule by adding thereto any department, ministry of state, board, commission, body or office of the Government of Canada.

#### CANADA EVIDENCE ACT

69. The Canada Evidence Act is amended by adding thereto, immediately after section 36 thereof, the following heading and section:

# Disclosure of Government Information

- 36.1 (1) A Minister of the Crown or other person interested may object to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying orally or in writing to the court, person or body that the information should not be disclosed on the grounds of a specified public interest.
- (2) An objection to disclosure referred to in subsection (1) may be reviewed by a superior court, in which case the court may examine or hear the information in respect of which the objection was made and order its disclosure, subject to such restrictions or conditions as it deems appropriate, if it concludes that, in the circumstances of the case, the public interest in disclosure outweighs in importance the specified public interest.

- (3) An objection to disclosure referred to in subsection (1) made to a court, person or body other than a superior court shall be determined in accordance with subsection (2) but may only be reviewed, on application, by
  - (a) the Federal Court—Trial Division, in the case of a person or body vested with power to compel production by or pursuant to an Act of Parliament if the person or body is not a court established under a law of a province; or
  - (b) the trial division or trial court of the superior court of the province within which the court, person or body exercises its jurisdiction, in any other case.
  - (4) An appeal lies from a determination under subsection
  - (a) to the Federal Court of Appeal from a determination of the Federal Court-Trial Division; or
  - (b) to the court of appeal of a province from a determination of a trial division or trial court of a superior court of a province.
- (5) An appeal lies to the Supreme Court of Canada with leave of that Court from a determination of the Federal Court of Appeal or a court of appeal of a province under this section where the Supreme Court is of the opinion that the question involved in the case sought to be appealed is, by reason of its public importance on the importance of any issue of law or any issue of mixed law and fact involved in the question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it.

#### FEDERAL COURT ACT

70. Section 41 of the Federal Court Act is repealed.

#### STATUTORY INSTRUMENTS ACT

- 71. (1) Subparagraph 27(c)(iii) of the Statutory Instruments Act is repealed and the following substituted therefor:
  - "(iii) any regulation or class of regulation where the Governor in Council is satisfied that the regulation or class of regulation is such that publication could reasonably be expected to
    - (A) affect adversely federal provincial negotiations, or
    - (B) be injurious to the conduct by Canada of international relations, the defence of Canada or any state allied or associated with Canada or the efforts of Canada towards detecting, preventing or suppressing subversive or hostile activities, as defined in subsection 15(2) of the Freedom of Information Act;"
- (2) Subparagraph 27(d) (ii) of the said Act is repealed and the following substituted therefor:
  - "(ii) any statutory instrument or class of statutory instrument other than a regulation, where the Governor in Council is satisfied that the inspection thereof and the obtaining of copies thereof could reasonably be expected to

15(2) of the Freedom of Information Act, or"

(B) be injurious to the conduct by Canada of international relations, the defence of Canada or any state allied or associated with Canada or the efforts of Canada towards detecting, preventing or suppressing subversive or hostile activities, as defined in sub-section

(A) affect adversely federal-provincial negotiations, or

# CONSEQUENTIAL AMENDMENTS

Canadian Human Rights Act

- 72. Section 44 of Canadian Human Rights Act is repealed and the following substituted therefor;
- 44. (1) Where any investigator of Tribunal requires the disclosure of any information and a Minister of the Crown or any other person interested objects to its disclosure, the Commission may apply to the Federal Court of Canada for a determination of the matter.
- (2) Where the Commission applies to the Federal Court of Canada pursuant to subsection (1) and the Minister of the Crown or other person interested objects to the disclosure in accordance with section 36.1 of the Canada Evidence Act, the matter shall be determined in accordance with the terms of that section.
- (3) Where the Commission applies to the Federal Court of Canada pursuant to subsection (1) but the Minister of the Crown or other person interested does not within ninety days thereafter object to the disclosure in accordance with section 36.1 of the Canada Evidence Act, the Court may take such action as it deems appropriate.

### COMMENCEMENT

73. This Act or any section or sections of this Act shall come into force on a day or 35 days to be fixed by proclamation.

### **EXPLANATORY NOTES**

Clause. 70: Section 41 of the Federal Court Act reads as follows:

- "41. (1) Subject to the provisions of any other Act and to subsection (2), when a Minister of the Crown certifies to any court by affidavit that a document belongs to a class or contains information which on grounds of a public interest specified in the affidavit should be withheld from production and discovery, the court may examine the document and order its production and discovery to the parties, subject to such restrictions or conditions as it deems appropriate, if it concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs in importance the public interest specified in the affidavit.
- (2) When a Minister of the Crown certifies to any court by affidavit that the production or discovery of a document or its contents would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council for Canada, discovery and production shall be refused without any examination of the document by the court."

Clause 71: The relevant portions of section 27 of the Statutory Instruments Act at present read as follows:

- "27. The Governor in Council may make regulations.
- (c) subject to any other Act of the Parliament of Canada, exempting from the application of subsection (1) of section 11
  - (iii) any regulation or class of regulation where the Governor in Council is satisfied that the regulation or class of regulation is such that in the interest of international relations, national defence or security or federal-provincial relations it should not be published.
- (d) precluding the inspection of and the obtaining of copies of
  - (ii) any statutory instrument or class of statutory instrument other than a regulation, where the Governor in Council is satisfied that in the interest of international relations, national defence or security or federal-provincial relations the inspection thereof and the obtaining of copies thereof should be precluded, or"

Clause 72: Section 44 of the Canadian Human Rights Act at present reads as follows:

44. (1) Where any investigator or Tribunal requires production or discovery of a document and a Minister of the Crown objects to its production or discovery. The Commission may apply to the Federal Court of Canada for a determination of the matter.

(2) Where the Commission applies to the Federal Court of Canada pursuant to subsection (1) and the Minister of Crown files an affidavit of the kind described in subsection 41(i) or (2) of the Federal Court Act, the matter shall be determined in accordance with the terms of that section subject to such modification as the circumstances require.

(3) where the Commission applies to the Federal Court of Canada pursuant to subsection (1) but the Minister of the Crown does not within ninety days thereafter file an affidavit of the kind referred to in subsection (2), the Court may take such action as it deems appropriate.

#### **SCHEDULE**

(Section 3)

#### GOVERNMENT INSTITUTIONS

Departments and Ministries of State

Department of Agriculture

Department of Communications

Department of Consumer and Corporate Affairs

Ministry of State for Economic Development

Department of Employment and Immigration

Department of Energy, Mines and Resources

Department of the Environment

Department of External Affairs

Department of Finance

Department of Fisheries and Oceans

Department of Indian Affairs and Northern Development

Department of Industry, Trade and Commerce

Department of Insurance

Department of Justice

Department of Labour

Department of National Defence

Department of National Health and Welfare

Department of National Revenue

Post Office Department

Department of Public Works

Department of Regional Economic Expansion

Ministry of State for Science and Technology

Department of the Secretary of State

Department of the Solicitor General

Department of Supply and Services

Department of Transport

Department of Veterans Affairs

## Other Government Institutions

Advisory Council on the Status of Women

Agricultural Products Board

Agricultural Stabilization Board

Anti-Dumping Tribunal

Atlantic Pilotage Authority

Atomic Energy Control Board

Bank of Canada

Bilingual Districts Advisory Board

Blue Water Bridge Authority

Board of Trustees of the Queen Elizabeth II Canadian Fund to Aid in Research on the Diseases of Children

Bureau of Pension Advocates

Canada Council

Canada Deposit Insurance Corporation

Canada Empolyment and Immigration Commission

Canada Labour Relations Board

Canada Mortgage and Housing Corporation

Canadian Commercial Corporation

Canadian Dairy Commission

Canadian Film Development Corporation

Canadian Forces

Canadian Government Specifications Board

Canadian Grain Commission

Canadian Human Rights Commission

Canadian Intergovernmental Conference Secretariat

Canadian International Development Agency

Canadian Livestock Feed Board

Canadian Patents and Development Limited

Canadian Penitentiary Service

Canadian Pension Commission

Canadian Radio-television and Telecommunications Commission

Canadian Saltfish Corporation

Canadian Transport Commission

The Canadian Wheat Board

Copyright Appeal Board

Crown Assets Disposal Corporation

Defence Construction (1951) Limited

The Director of Soldier Settlement

The Director, The Veterans' Land Act

Economic Council of Canada

Energy Supplies Allocation Board

**Export Development Corporation** 

Farm Credit Corporation

Federal Business Development Bank

Federal Insolvency Trustee Agency

Federal Mortgage Exchange Corporation

Federal Provincial Relations Office

Fisheries Prices Support Board

The Fisheries Research Board of Canada

Foreign Investment Review Agency

Freshwater Fish Marketing Corporation

Great Lakes Pilotage Authority, Ltd.

Historic Sites and Monuments Board of Canada

Immigration Appeal Board

International Development Research Centre

Laurentian Pilotage Authority

Law Reform Commission of Canada

Medical Research Council

Merchant Seamen Compensation Board

Metric Commission

National Arts Centre Corporation

National Battlefields Commission

National Capital Commission

National Design Council

National Energy Board

National Farm Products Marketing Council

National Film Board

National Harbours Board

National Library

National Museums of Canada

National Parole Board

National Research Council of Canada

Natural Sciences and Engineering Research Council

Northern Canada Power Commission

Northwest Territories Water Board

Office of the Comptroller General

Office of the Co-ordinator, Status of Women

Office of the Correctional Investigator

Office of the Custodian of Enemy Property

Pacific Pilotage Authority

Pension Appeals Board

Pension Review Board

Prairie Farm Assistance Administration

Prairie Farm Rehabilitation Administration

Privy Council Office

Public Archives

Public Service Commission

Public Service Staff Relations Board

Public Works Land Company Limited

Regional Development Incentive Board

Restrictive Trade Practices Commission

Royal Canadian Mint

Royal Canadian Mounted Police

The St. Lawrence Seaway Authority

Science Council of Canada

The Seaway International Bridge Corporation, Ltd.

Social Sciences and Humanities Research Council

Standards Council of Canada

Statistics Canada

Statute Revision Commission

Superintendant of Bankruptcy

Tariff Board

Tax Review Board

Textile and Clothing Board

Treasury Board Secretariat

Uranium Canada, Limited

War Veterans Allowance Board

Yukon Territory Water Board

# Access to Official Information

[Introducing the Freedom of Information Bill in the Senate, in June 1978, Senator the Hon. P.D. Durack, Attorney-General, made the following statement].

Hon, senators will be aware from public statements, such as the governor-general's speech at the opening of this parliament, of the Government's concern to ensure that the Australian community has access to official information where this can be done without endangering another overriding public interest. The interests of all sections of the community need to be taken into account by the government when it moves to widen the opportunities for gaining access to official information. We have, however, been particularly mindful that any such initiatives must take account of those individuals and groups traditionally seen as having specific claims to access to such information. Broadly these are: senators and members; the other levels of government in Australia; individuals, groups and organisations who seek information to allow them properly to pursue their legitimate interests—for example, those seeking to press claims to benefits, rights, or other entitlements—individuals and groups representing a particular section of society seeking legitimately to advocate their particular views with respect to matters of government policy; the media; and persons undertaking academic research. Obviously these categories overlap.

There are, of course, many means properly open already, both within and outside the Parliament, by which official information can be obtained. Some involve compulsory processes, others are voluntary. Hon. senators will know that much official information is made available, for example, in answers to parliamentary questions, in ministerial policy statements, in second reading speeches, and by the tabling of papers and reports. In appropriate cases Bills and reports are left to lie to promote informed public comment and debate.

In the parliamentary statement of the Prime Minister (Mr. Malcolm Fraser) of 9 December 1976 and the recent parliamentary statement on the setting up of legislation committees in the other place, references were made to a number of recent and proposed initiatives having a bearing on access to information such as draft guidelines on the handling of information requests by senators and members to departments and authorities; draft guidelines on appearances by public servants before party committees; and a study of the possible scope for improvement in the arrangements for provision of explanatory memoranda on Bills. The statement of 9 December 1976 also contained guidelines on pre-election consultations by the opposition with officials.

Existing extra-parliamentary avenues available to a member of the Australian community to obtain information are wide-ranging and include government material published and distributed through the Australian Government Publishing Service, such as the *Commonwealth Record*, as well as many types of material produced internally by departments and instrumentalities, and often distributed through the various liaison-advisory services of those departments and instrumentalities.

In line with its recognition and overall concern that a member of the community may better protect his individual rights, the government has already been active in ensuring that, when legislation was passed to establish an external review system, the citizen's opportunities for access to information were buttressed. Subject to the need, in the public interest, for confidentiality in certain circumstances, these recent measures such as the setting-up of the administrative appeals tribunal, the appointment of a Commonwealth ombudsman and, once commenced, the Administrative Decisions (Judicial Review) Act provide ways in which a member of the public can gain access to relevant official information not previously available. Taken together, these legislative initiatives provide unparalleled opportunities for the redress of perceived grievances arising from administrative actions. The Commonwealth's external review system is recognised as being one of the most advanced in the world.

I now wish to inform Hon. senators of a number of recent decisions and further initiatives being taken by the government to provide additional arrangements for access to official information.

### POLICY INFORMATION AND POLICY DISCUSSION PAPERS

The report of the Joint Committee on the Parliamentary Committee System recommended 'that governments adopt the practice of presenting to the House of Representatives Green Papers and White Papers relating to proposed legislation', and the Royal Commission on Australian Government Administration recommended 'that wider use be made of Green Papers to open up public debate before programs are finalised.'

The Government has decided to formalise the practice of issuing policy information—White—and Policy discussion—Green Papers in appropriate cases and to use this terminology—policy information and policy discussion—in a uniform way so that in future a policy information paper will be an information document setting out the policy, philosophy and reasoning of government decisions affecting the community and which presents policy to which the government is firmly committed; and/or offers explanation to the general community of government decisions or intentions; and/or indicates the broad lines of proposed legislation and possibly of future executive action; and/or provides the factual basis for informed parliamentary and public debate.

A policy discussion paper will be a discussion document setting out alternative courses of action and which indicates the policy options available in respect of a particular matter with a view to seeking the opinions of informed and interested parties; and/or presents tentative proposals or options for discussion but specifically and on its face does not commit the Government to adopt any of the options expressed in the paper; and/or gives the parliament an opportunity to address itself to policy matters before decisions are taken; and/or encourages public discussion while policy is still in the formative stage. Such papers will not be officially designated as policy information or policy discussion papers unless they are to be presented to the parliament.

New instructions are being issued to ensure that, in the preparation of policy proposals for consideration by the government, Ministers and officials give specific consideration to what factual material and analysis embodied in documents which, because of an overriding public interest, the government would wish to retain as confidential, might be released publicly and whether or not such material might be presented suitably as a policy information or policy discussion paper. It needs to be recognised, of course, that issue of a policy discussion paper does not mean that particular action, such as issue of a policy information paper, will necessarily follow.

Considerable effort and resources are involved in government information activities. In harmony with its twin desires for improved public access to information and greater efficiency and effectiveness in administration, the government has been giving some thought to current arrangements.

In this regard, Hon. senators will be aware that the Royal Commission on Australian Government Administration made several recommendations relating to public access to

government information. In particular, it recommended that there be a review of departmental information programs. The government accepted this recommendation and each minister was asked to review the ways in which his or her department disseminates information to the public on government programs and activities.

Following a preliminary examination of these matters, the government has decided to establish a small inter-departmental task force to make recommendations to ministers on the effectiveness of particular departmental information activities, including: information for disadvantaged groups; an examination of the most effective uses of printed material and the non-print media; methods of distribution; the role, operation and staffing of departmental information units; evaluation procedures in departments; means of recording information expenditure; and scope for cost recovery.

The government has also decided to establish a small information unit to encourage more effective communication to the public of government decisions and actions. This unit will have a similar role to that defined for the government public relations office established in 1951 by the Menzies Government and which operated until 1973. These efforts will, the government expects, contribute to a continued improvement in access by the public to information on government activities.

The Review of Post-Arrival Programmes and Services to Migrants has shown that ethnic groups have particular problems in obtaining access to information. As the Prime Minister announced on 30 May, the government will implement the Review's recommendations including those relating to new and additional special information services for migrants. In this respect the government will move to strengthen coordination of information services and advice to ethnic groups. There will be an extensive survey of migrants' need for information and its dissemination. Further, in accordance with the recommendations of the Review, steps will be taken to improve the ways in which migrants get information in areas of special need, including information relevant to employment, health, consumer protection, bail procedures, the Commonwealth ombudsman and legal aid.

### DEPARTMENTAL AND INSTRUMENTALITY ANNUAL REPORTS

Hon, senators will be aware that, unlike many Commonwealth instrumentalities, departments of state are not statutorily required to make annual reports for tabling in the parliament. Nevertheless, some departments have done so. The Royal Commission on Australian Government Administration made several recommendations on this subject. The government has considered those recommendations and, in the interests of wider dissemination of information on the activities of government, has agreed that all departments produce annual reports.

The detailed content of each annual report will be the responsibility of the permanent head concerned. An interdepartmental working party is being established to prepare broad guidelines on the desirable content of such reports, and to undertake a review of the range of financial information suggested by the Royal Commission. The working party will take into account the findings of the report of the joint committee on publications—August 1977—following its inquiry into the purpose, scope and distribution of the parliamentary papers series, and the implications of proposed freedom of information legislation.

I should mention that the government has been concerned that there have, over many years, been delays in the tabling of some reports required by statute. It is obviously most desirable that these reports be available as quickly as possible after the end of the year to which they refer, not the least because of their assistance in providing information to Hon. senators. The Prime Minister has therefore recently written to all ministers specifically drawing this problem to their attention, with a view to ensuring that reports are presented to the parliament in proper time.

A related aspect of the government's administrative programme to facilitate the provision of information to its clients, the public, was its decision to establish the

Interdepartmental Committee on Improvement in the Quality of Services provided to the General Public by counter staff in Commonwealth departments. That Committee, which considered the views of the Royal Commission on Australian Government Administration, investigated ways and means of improving the government's counter services and put recommendations to the government.

The government has reaffirmed its desire to upgrade the standard of counter staff facilities and improve counter staff services. Whilst the government has endorsed a number of the committee's recommendations and directed that departments and agencies implement them, it has also requested that additional studies be undertaken on some recommendations prior to further consideration by the government. The government will be making material, including the committee's report available publicly once it has concluded its examination of the report's recommendations. One particular initiative, however, should be mentioned in this statement. The government has commissioned preparation of a simple directory of the more common services provided by Commonwealth bodies, for use at counters.

In addition to general access to material through normal governmental and departmental operations, information relevant to development of Commonwealth policies and programmes is also made available to other levels of government in Australia, and to a considerable range of representatives from the community, through advisory-consultative bodies which the Commonwealth has established or in which the Commonwealth participates.

The establishment by this government of the Advisory Council for Inter-Government Relations, and agreement at the October 1977 Premiers Conference on new, broader consultative processes between the Commonwealth and the states on treaty matters and the use of the external affairs power, have proved noteworthy additions to the inter-governmental consultative processes. Such recently established bodies as the National Consultative Council on Social Welfare, the National Women's Advisory Council, the Australian Ethnic Affairs Council, the National Aboriginal Conference and the National Labour Consultative Council are examples of the Government's desire to bring a wide range of interest groups in the community into the policy advising processes of government.

I now turn to significant legislative initiatives about to be taken by the government.

### FREEDOM OF INFORMATION BILL

I shall be introducing later today the Freedom of Information Bill 1978 which is a unique legislative measure in a government system with a traditional Westminster type of responsible executive. The provisions of the Bill are based largely on the recommendations of the Interdepartmental Committee Report on Policy Proposals for Freedom of Information Legislation which was tabled in the parliament on 9 December 1976.

Broadly stated, the Bill will give members of the public enforceable rights to access, subject to specified exceptions, to future documents in the possession of departments—other than the parliamentary departments—and of statutory authorities and other Commonwealth agencies, and to official documents in the possession of ministers. The person seeking the document will not be required to 'prove an interest' in that document and the procedures to gain properly authorized access will be kept as simple as possible. Access may be refused to documents where disclosure would be contrary to the public interest on one or more of the grounds set out in the Bill. Except in specified circumstances the decision whether a document qualifies for exemption will be reviewable by the Administrative Appeals Tribunal.

The Bill would not prevent ministers and officials from providing access to documents, even though they qualify the exemption, where such access can properly be granted. It also requires in specified circumstances that access be granted to documents with exempt material exercised. In addition the Bill will require the publication or making available of information concerning the functions of departments, authorities and agencies, and of various materials such as procedural manuals, often referred to as 'hidden law' which may affect persons in their dealings with a government agency.

### ARCHIVES BILL

I shall also be introducing later today the Archives Bill 1978, which replaces current administrative processes. It will statutorily establish the Australian archives and provide for: the preservation of government records of continuing value and of related material of national significance; and access by scholars and the public to the archival resources of the Commonwealth in accordance with the government's access policy. Detailed descriptions of records and other archival materials—including those in the custody of other institutions—will be recorded in the Australian national register of records.

The legislation will provide that the generality of government records more than 30 years old are to be made available for public access. Records to which the public is entitled to have access under the legislation will be recorded in an Australian national guide to archival material which will also include details of records hitherto made available under existing administrative arrangements and other archival materials of general public interest. The guide will be available for public inspection and, as an interim measure, while the guide is being compiled, the reference services of the Archives will be available to assist in identifying material to which the public is entitled to have access.

In accordance with general arrangements to be approved by the Prime Minister, the minister responsible for the archives will be empowered, in consultation with the responsible government agency, to make whole classes of records which are less than 30 years old, available for public access, and to allow access, by persons for specified purposes, to records not otherwise available.

Mr President, excessive secrecy would be unwholesome and inimical to the democratic process. Unfettered access to all official documents would make government impossible. The aim of the government initiatives I have announced is to balance the acknowledged interest of the public in obtaining increased access to official information against other public interests which require that certain information should remain confidential. Such a task is never completed and among other things costs need to be monitored. But the evolutionary process towards a more open governmental system is continuing as evidenced by the advances now announced.

# The Freedom of Information Bill

[Australia introduced the Freedom of Information Bill in the Senate in June 1978. The Bill is pending consideration by the Senate. Following is the text of the Bill.]

# A Bill for an Act

To give to members of the public rights of access to official documents of the Government of the Commonwealth and of its agencies.

Be it enacted by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

### PART I-PRELIMINARY

### Short Title

1. This Act may be cited as the Freedom of Information Act 1978.

#### Commencement

2. The several parts of this Act shall come into operation on such respective dates as are fixed by Proclamation.

#### Interpretation

3. (1) In this Act, unless the contrary intention appears:

'agency' means a Department or a prescribed authority;

'applicant' means a person who has made a request;

'Department' means a Department of the Australian Public Service other than the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department;

'document' includes any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes;

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'document of an agency' or 'document of the agency' means a document in the possession of an agency, or in the possession of the agency concerned, as the case requires, whether created in the agency or received in the agency;

'enactment' means:

- (a) an Act;
- (b) an Ordinance of the Australian Capital Territorry, or
- (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance;

'exempt document' means:

(a) a document which, by virtue of a provision of Part IV, is an exempt document;

(b) a document in respect of which, by virtue of regulations made in accordance with section 5, an agency is exempt from the operation of this Act; or

(c) an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State:

'exempt matter' means matter the inclusion of which in a document causes the document to be an exempt document;

'officer', in relation to an agency, includes a member of the agency or a member of the staff of the agency;

'official document of a Minister' or 'official document of the Minister' means a document in the possession of a Minister, or in the possession of the Minister concerned, as the case requires, that relates to the affairs of an agency or of a Department of State and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his possession if he is entitled to access to the document and the document is not a document of an agency;

'Ombudsman' means the Commonwealth Ombudsman;

'Ordinance', in relation to the Australian Capital Territory or the Northern Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment;

'prescribed authority' means:

(a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, other than:

(i) an incorporated company or association;

(ii) a body that, under sub-section (2), is not to be taken to be a prescribed authority for the purposes of this Act;

(iii) the Australian Capital Territory Legislative Assembly;

(iv) the Legislative Assembly of the Northern Territory or the Executive Council of the Northern Territory; or

(v) a Royal Commission;

- (b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being:
  - (i) a body established by the Governor-General or by a Minister; or
  - (ii) an incorporated company or association over which the Commonwealth is in a position to exercise control;
- (c) subject to sub-section (3), the person holding, or performing the duties of, an office established by an enactment; or
- (d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purpose of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment;

'principal officer' means :

- (a) in relation to a Department—the person holding, or performing the duties of, the office of Permanent Head of the Department; and
  - (b) in relation to a prescribed authority:

(i) if the regulations declare an office to be the principal office in respect of the authority
 —the person holding, or performing the duties of, that office; or

 (ii) in any other case—the person who constitutes that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he is present; 'request' means a request made in accordance with sub-section 13 (1); 'responsible Minister' means:

- (a) in relation to a Department—the Minister administering the relevant Department of State:
- (b) in relation to a prescribed authority referred to in paragraph (a) of the definition of 'prescribed authority'—the Minister administering the enactment by which, or in accordance with the provisions of which, the prescribed authority is established:
- (c) in relation to a prescribed authority referred to in paragraph (c) of that definition—the Minister administering the enactment by which the office is established; or
- (d) in relation to any other prescribed authority—the Minister declared by the regulations to be the responsible Minister in respect of that authority, or another Minister acting for and on behalf of that Minister:

'Tribunal' means the Administrative Appeals Tribunal.

- (2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions of, an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purposes of this Act, but shall be deemed to be comprised within that prescribed authority.
  - (3) A person shall not be taken to be a prescribed authority:
- (a) by virtue of his holding an office of member of the Australian Capital Territory Legislative Assembly, member of the Legislative Assembly of the Northern Territory or Administrator or Minister of the Northern Territory; or
  - (b) by virtue of his holding, or performing the duties of:
  - (i) a prescribed office:
  - (ii) an office the duties of which he performs as duties of his employment as an officer
    of a Department or as an officer of or under a prescribed authority;
  - (iii) an office of member of a body; or
  - (iv) an office established by an enactment for the purposes of a prescribed authority.
- (4) For the purposes of this Act, the Defence Force shall be deemed to be comprised in the Department of Defence.
- (5) For the purposes of this Act, the Commonwealth Police Force and the Police Force of the Australian Capital Territory shall each be deemed to be a prescribed authority.

# Act Not to Apply to Courts and Certain Tribunals

- 4. For the purposes of this Act:
- (a) a court, or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department;
- (b) a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department;
- (c) a tribunal, authority or body specified in this paragraph, or the holder of an office pertaining to such a tribunal, authority or body in his capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department, namely:
  - (i) the Australian Conciliation and Arbitration Commission;
  - (ii) the Industrial Registrar or a Deputy Industrial Registrar;
  - (iii) the Flight Crew Officers Industrial Tribunal;
  - (iv) the Public Service Arbitrator or a Deputy Public Service Arbitrator; and
  - (v) the Coal Industry Tribunal or any other Tribunal, authority or body appointed in accordance with Part V of the Coal Industry Act 1946; and

(d) a registry or other office of, or under the charge of, a tribunal, authority or body referred to in paragraph (e), and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department.

# Exemption of Bodies by Regulations

- 5. The regulations may provide that:
- (a) a specified body is to be deemed not to be a prescribed authority for the purposes of this Act;
- (b) a body specified in accordance with paragraph (a) is, or is not, to be taken to be included in a specified agency; or
- (c) a specified agency is to be exempt from the operation of this Act in respect of documents relating to specified functions or activities of the agency or in respect of documents of any other prescribed description.

# PART II—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

# Publication of Information Concerning Functions and Documents of Agencies

- 6. (1) The responsible Minister of an agency shall:
- (a) cause to be published, as soon as practicable after the commencement of this Part but not later than 12 months after that commencement, in a form approved by the Minister administering this Act:
  - (i) a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representations by, bodies and persons outside the Commonwealth administration in relation to the formulation of policy in, or the administration of, the agency; and
  - (ii) a statement of the categories of documents that are maintained in the possession of the agency; and
- (b) within 12 months after the publication, in respect of the agency, of the statement under sub-paragraph (i) or (ii) of paragraph (a) that is the first statement published under that sub-paragraph, and thereafter at intervals of not more than 12 months, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that sub-paragraph.
- (2) A form approved by the Minister under sub-section (1) shall be such as he considers appropriate for the purpose of assisting members of the public to exercise effectively their rights under Part III.
- (3) The information to be published in accordance with this section may be published by including it in the publication known as the Commonwealth Government Directory.
- (4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
- (5) Sub-section (1) applies in relation to an agency that comes into existence after the commencement of this Part as if the references in that sub-section to the commencement of this Part were references to the day on which the agency comes into existence.

# Certain Documents to be Available for Inspection and Purchase

7. (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the

agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject, being:

(a) manuals or other documents containing interpretations, rules, guidelines, practices

or precedents; or

(b) documents containing particulars of such a scheme, not being particulars contained in an enactment as published apart from this Act, but not including documents that are available to the public as published otherwise than by an agency or as published by another agency.

(2) The principal officer of an agency shall:

- (a) cause copies of all documents to which this section applies in respect of the agency that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) not later than 12 months after the commencement of this Part, cause to be published in the *Gazette* statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and
- (c) within 12 months after the publication of the statement under paragraph (b) and thereafter at intervals of not more than 12 months, cause to be published in the Gazette statements bringing up to date the information contained in the previous statement or statements.
- (3) The principal officer is not required to comply fully with paragraph (2) (a) before the expiration of 12 months after the date of commencement of this Part, but shall, before that time, comply with that paragraph so far as is practicable.
- (4) This section does not require a document of the kind referred to in sub-section (1) containing exempt matter to be made available in accordance with sub-section (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with sub-section (2).
- (5) Sub-sections (2) and (3) apply in relation to an agency that comes into existence after the commencement of this Part as if the references in those sub-sections to the commencement of this Part were references to the day on which the agency comes into existence.
- (6) In this section, 'enactment' includes an Ordinance of the Northern Territory or an instrument (including rules, regulations or by-laws) made under such an Ordinance.

## Unpublished Documents not to be Published

8. If a document required to be made available in accordance with section 7, being a document containing a rule, guideline or practice relating to a function of an agency, was not made available, and included in a statement in the *Gazette*, as referred to in that section, before the time (being more than 12 months after the date of commencement of this Part or the day on which the agency came into existence, whichever is the later) at which a person did, or omitted to do, any act or thing relevant to the performance of that function in relation to him (whether or not the time allowed for publication of a statement in respect of the document had expired before that time), that person, if he was not aware of that rule, guideline or practice at that time, shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

### PART III—ACCESS TO DOCUMENTS

# Right of Access

9. Subject to this Act, every person has a legally enforceable right to obtain access in

accordance with this Act to:

(a) a document of an agency, other than an exempt document; or

(b) an official document of a Minister, other than an exempt document.

# Part not to Apply to Certain Documents

10. (1) A person is not entitled to obtain accept under this Part to:

(a) a document, or a copy of a document, where a period of 30 years has elapsed since the end of the year ending on 31 December in which the document came into existence:

(b) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or

(c) a document that is available for purchase by the public in accordance with arrangements made by an agency.

(2) A person is not entitled to obtain access under this Part to a document that became a document of an agency or an official document of a Minister before the date of commencement of this Part, except where access to the document by him is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Minister he has lawfully had access.

## Documents in Certain Institutions

11. (1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being:

(a) in the collection of war relics of the Commonwealth within the meaning of the Australian War Memorial Act 1962:

(b) in the collection of library material maintained by the National Library of Australia; or

(c) in the custody of the Australian Archives (otherwise than as a document relating to the administration of the Australian Archives), if the document was placed in that collection, or in that custody, by or on behalf of a person

(including a Minister or former Minister) other than an agency.

(2) For the purposes of this Act, a document that has been placed in the custody of the Australian Archives, or in a collection referred to in sub-section (1), by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.

(3) Notwithstanding sub-sections (1) and (2), records of a Royal Commission that are in the custody of the Australian Archives shall, for the purposes of this Act, be deemed to be documents of an agency and to be in the possession of the Department administered by the Minister administering the Royal Commissions Act 1902.

(4) Nothing in this Act affects the provision of access to documents by the Australian Archives in accordance with the Archives Act 1978.

Access to Documents Apart from Act

12. Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

# Requests for Access

13. (1) A person who wishes to obtain access to a document of an agency or an official document of a Minister may make a request in writing to the agency or Minister for access to the document.

(2) Subject to sub-section (3), a request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.

- (3) Where a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter, compliance with the request may be refused if it would interfere unreasonably with the operations of the agency or the performance by the Minister of his functions, as the case may be, having regard to any difficulty that would exist in identifying, locating or collating documents containing relevant information within the filing system of the agency or of the office of the Minister.
- (4) It is the duty of an agency, where practicable, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate agency or Minister, to make a request in a manner that complies with this section or to direct a request to the appropriate agency or Minister.
- (5) Where a request in writing is made to an agency for access to a document, the agency shall not refuse to comply with the request on the ground:
  - (a) that the request does not comply with sub-section (2); or
- (b) that, in the case of a request of the kind referred to in sub-section (3), compliance with the request would interfere unreasonably with the operations of the agency, without first giving the applicant a reasonable opportunity of consultation with the agency with a view to the making of a request in a form that would remove the ground for refusal.

# Transfer of Requests

- 14. (1) Where:
- (a) a request is made to an agency for access to a document; and
- (b) the document is not in the possession of that agency but is in the possession of another agency or the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made, the agency to which the request is made may transfer the request to the other agency and inform the person making the request accordingly and, if it is necessary to do so in order to enable the other agency to deal with the request, send the document to the other agency.
- (2) Where a request is transferred to an agency in accordance with this section, it shall be deemed to be a request made to that agency and received at the time at which it was originally received.
  - (3) In this section 'agency' includes a Minister.

# Requests Involving Use of Computers, & c.

- 15. (1) Where:
- (a) a request (including a request of the kind described in sub-section 13(3)) is duly made to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the agency; and
- (c) the agency could produce a written document containing the information in discrete form by:
  - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
  - (ii) the making of a transcript from a sound recording held in the agency,

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with sub-section (1) if compliance would interfere unreasonably with the operations of the agency.

# Access to Documents to be Given on Request

16. (1) Subject to this Act, where:

(a) a request is duly made by a person to an agency or Minister for access to a document of the agency or an official document of the Minister; and

(b) any charge that, under the regulations, is required to be paid before access is granted has been paid,

the person shall be given access to the document in accordance with this Act.

(2) An agency or Minister is not required by this Act to give access to a document at a time when the document is an exempt document.

# Time within which Formal Requests to be Decided

17. If a request to an agency or Minister:

(a) is made in writing and is expressed to be made in pursuance of this Act; and

(b) is sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at an address of the agency or of the Minister, as the case may be, that is, under the regulations, an address to which requests made in pursuance of this Act may be sent or delivered in accordance with this section, the agency or Minister shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than 60 days after the day on which the request is received by or on behalf of the agency or Minister.

# Forms of Access

- 18. (1) Access to a document may be given to a person in one or more of the following forms:
  - (a) a reasonable opportunity to inspect the document;
  - (b) provision by the agency or Minister of a copy of the document;
- (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images:
- (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.
- (2) Subject to sub-section (3) and to section 20, where the applicant has requested access in a particular form, access shall be given in that form,
  - (3) If the form of access requested by the applicant:
- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his functions, as the case may be:
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
- (c) would involve an infringement of copyright (other than copyright owned by the Commonwealth) subsisting in the document, access in that form may be refused and access given in another form.

#### Deferment of Access

19. (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

# Deletion of Exempt Matter

20. (1) Where:

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is practicable for the agency or Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,

the agency or Minister shall grant access to such a copy of the document.

- (2) Where access is granted to a copy of a document in accordance with sub-section (1):
- (a) the applicant shall be informed that it is such a copy and also informed of the provision of this Act by virtue of which any matter deleted is exempt matter; and
- (b) section 22 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him a notice in writing in accordance with that section.

# Decisions to be made by Authorized Persons

21. A decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

# Reasons and other Particulars of Decisions to be given

- 22. (1) Where, in relation to a request for access to a document or an agency or an official document or a Minister, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred, the agency or Minister shall cause the applicant to be given notice in writing of the decision, and the notice shall:
- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to a document of an agency; state the name and designation of the person giving the decision; and
  - (c) inform the applicant of his right to apply for a review of the decision.
- (2) An agency or Minister is not required to include in a notice under sub-section (1) any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

## PART IV-EXEMPT DOCUMENTS

Documents Affecting National Security Defence, International Relations and Relations with States

- 23. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure:
  - (a) would prejudice:
  - (i) the security of the Commonwealth:
  - (ii) the defence of the Commonwealth;
  - (iii) the international relations of the Commonwealth; or
  - (iv) relations between the Commonwealth and any State; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country or of a State to the Government of the Commonwealth or a person receiving the communication on behalf of that Government.

(2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document referred to in sub-section (1).

(3) Where a Minister is satisfied as mentioned in sub-section (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as

containing the matter by reason of which the certificate is given.

(4) The responsible Minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the principal officer of the agency his powers under this section in respect of documents of the agency.

(5) A power delegated under sub-section (4), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister.

(6) A delegation under sub-section (4) does not prevent the exercise of a power by the responsible Minister.

#### Cabinet Documents

24. (1) A document is an exempt document if it is:

(a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted;

(b) an official record of the Cabinet:

- (c) a document that is a copy of, or a part of, a document referred to in paragraph (a) or (b): or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.
- (2) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes conclusively that it is an exempt document of that kind.
- (3) Where a document is a document referred to in paragraph (1) (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.
- (4) Sub-section (1) does not apply to a document by reason of the fact that it was submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted if it was not brought into existence for the purpose of submission for consideration by the Cabinet.
- (5) A reference in this section to the Cabinet shall be read as including a reference to a committee of the Cabinet.

#### Executive Council Documents

25. (1) A document is an exempt document if it is:

(a) a document that has been submitted to the Executive Council for its consideration or is proposed by a Minister to be so submitted;

(b) an official record of the Executive Council;

- (c) a document that is a copy of, or of a part of, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or advice of the Executive Council, other than a document by which an act of the Governor-General, acting with the advice of the Executive Council, was officially published.
- (2) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a document is

one of a kind referred to in a paragraph of sub-section (1) establishes conclusively that it is an exempt document of that kind.

- (3) Where a document is a document referred to in paragraph (1) (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.
- (4) Sub-section (1) does not apply to a document by reason of the fact that it was submitted to the Executive Council for its consideration, or is proposed by a Minister to be so submitted, if it was not brought into existence for the purpose of submission for consideration by the Executive Council.

Internal Working Documents

- 26. (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act:
- (a) would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth; and

(b) would be contrary to the public interest.

- (2) In the case of a document of the kind referred to in sub-section 7(1), the matter referred to in paragraph (1)(a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 7(1).
- (3) This section does not apply to a document by reason only of purely factual material contained in the document.

(4) This section does not apply to:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a prescribed body or organization established within an agency; or
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.
- (5) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 22 shall state the ground of public interest on which the decision is based.

# Documents Affecting Enforcement or Administration of the Law

- 27. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to:
- (a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;
  - (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;
- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or precedures; or
- (e) endanger the lives or physical safety of persons engaged in or in connexion with law enforcement,

# Documents to which Secrecy Provisions of Enactments Apply

28. (1) A document is an exempt document if it is a document to which a prescribed

provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies.

(2) In this section, 'enactment' includes an Ordinance of the Northern Territory or an instrument (including rules, regulations or by-laws) made under such an Ordinance.

# Certain Documents Concerning Operations of Agencies

29. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the financial, property or staff management interests of the Commonwealth or of an agency or would otherwise have a substantial adverse effect on the efficient and economical conduct of the affairs of an agency.

# Documents Affecting Personal Privacy

- 30. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).
- (2) Subject to sub-section (3), the provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.
- (3) Where a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to him but is to be given instead to a medical practitioner to be nominated by him.

# Documents Affecting Legal Proceedings or Subject to Legal Professional Privilege

31. (1) A document is an exempt document if its disclosure under this Act would be reasonably likely to have a substantial adverse effect on the interests of the Commonwealth or of an agency in or in relation to pending or likely legal proceedings.

(2) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(3) A document of the kind referred to in sub-section 7(1) is not an exempt document by virtue of sub-section (2) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 7(1).

# Documents Relating to Trade Secrets &c.

- 32. (1) A document is an exempt document if its disclosure under this Act would disclose information concerning a person in respect of his business or professional affairs or concerning a business, commercial or financial undertaking, and:
- (a) the information relates to trade secrets or relates to other matter the disclosure of which under this Act would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; or
- (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Commonwealth or of an agency to obtain similar information in the future.
- (2) The provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning that person in respect of his business or professional affairs or of information

concerning a business, commercial or financial undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor.

Documents Affecting National Economy

33. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.

Documents Containing Material Obtained in Confidence

34. A document is an exempt document if its disclosure under this Act would constitute a breach of confidence.

Documents Disclosure of which would be Contempt of Parliament or Contempt of Court

- 35. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:
  - (a) be in contempt of court;

(b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or

(c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory.

Privileged Documents

- 36. (1) Where the Attorney-General is satisfied that the disclosure under this Act of a particular document, or of any document included in a particular class of documents, would be contrary to the public interest on a particular ground, being a ground that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the contents of the document, or of a document included in that class, as the case may be, should not be disclosed, he may sign a certificate that he is so satisfied, specifying in the certificate the ground concerned, and, while such a certificate is in force, but subject to Part V, the document, or every document included in that class, as the case may be, is an exempt document.
- (2) A certificate under sub-section (1) in relation to a particular document shall be deemed to refer also to every document that is substantially identical to that document.

#### PART V — REVIEW OF DECISIONS

Applications to Administrative Appeals Tribunal

- 37. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document.
- (2) ubject to sub-section (3), in proceedings under this part, the Tribunal has power, in addition to any other power, to review any decision that has been made by an agency or Minister in respect of the request and any decision of the Attorney-General to give a certificate under section 36 that is applicable to the document and to decide any matter in relation to the request that, under this Act, could have been or could be decided by an agency or Minister, and any decision of the Tribunal under this section has the same effect as a decision of the agency or Minister.
- (3) Where, in proceedings under this section, it is established that a document is an exempt document, the Tribunal does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.
- (4) The powers of the Tribunal do not extend to reviewing a decision of an agency or Minister, for the purposes of sub-section 26(1), that the disclosure of a document would be contrary to the public interest.

(5) Where, under a provision of Part IV, it is provided that a certificate of a specified kind establishes conclusively, for the purposes of this Act, that a document is an exempt document and such a certificate has been given in respect of a document, the powers of the Tribunal do not extend to reviewing the decision to give the certificate or the existence of proper grounds for the giving of the certificate.

(6) The powers of the Tribunal under this section extend to matters relating to charges

payable under this Act in relation to a request.

# Internal Review

38. (1) Where a decision has been made, in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency (not being a decision on a review under this section), the applicant may, within 28 days after the day on which notice of the decision was given to the applicant in accordance with section 22, apply to the principal officer of the agency for a review of the decision in accordance with this section.

(2) A person is not entitled to apply to the Tribunal for a review of a decision in relation

to which sub-section (1) applies unless —

(a) he has made an application under that sub-section in relation to the decision; and

(b) he has been informed of the result of the review or a period of 14 days has elapsed

since the day on which he made that application.

(3) Where an application for a review of a decision is made to the principal officer in accordance with sub-section (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and to make a fresh decision on the original application.

(4) Where:

(a) an application for a review of a decision has been made in accordance with subsection (1); and

(b) the applicant has not been informed of the result of the review within 14 days after the day on which he made that application,

an application to the Tribunal for a review of the decision may be treated by the Tribunal as having been made within the time allowed under the Administrative Appeals Tribunal Act 1975 if it appears to the Tribunal that there was no unreasonable delay in making the application to the Tribunal.

# Application to Tribunal where Decision Delayed

39. (1) Subject to this section, where:

(a) a request has been made to an agency or Minister in accordance with section 17;

(b) a period of 60 days has elapsed since the day on which the request was received by or on behalf of the agency or Minister; and

(c) notice of a decision on the request has not been received by the applicant,

the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 37, be deemed to have made, on the last

day of that period, a decision refusing to grant access to the document.

- (2) Where a complaint is made to the Ombudsman under the Ombudsman Act 1976 concerning failure to make and notify to the applicant a decision on a request (whether the complaint was made before or after the expiration of the period referred to in sub-section (1)), an application to the Tribunal under section 37 of this Act by virtue of this section shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the Ombudsman Act 1976.
- (3) Where such a complaint is made before the expiration of the period referred to in sub-section (1), the Ombudsman, after having investigated the complaint, may, if he is of the opinion that there has been unreasonable delay by an agency in connexion with the request, grant to the applicant a certificate certifying that he is of that opinion, and, if the Ombudsman does so, the principal officer of the agency or the Minister, as the case requires,

shall, for the purposes of enabling application to be made to the Tribunal under section 37, be deemed to have made, on the date on which the certificate is granted, a decision refusing to grant access to the document.

(4) The Ombudsman shall not grant a certificate under sub-section (3) where the request to which the complaint relates was made to, or has been referred to, a Minister and is await-

ing decision by him.

(5) Where, after an application has been made to the Tribunal by virtue of this section but before the Tribunal has finally dealt with the application, a decision, other than a decision to grant, without deferment, access to the document in accordance with the request, is given, the Tribunal may, at the request of the applicant, treat the proceedings as extending to a review of that decision in accordance with this Part.

(6) Before dealing further with an application made by virtue of this section, the Tribunal may, on the application of the agency or Minister concerned, allow further time to the

agency or Minister to deal with the request.

#### **Parties**

40. For the purposes of this Part and of the application of the Administrative Appeals Tribunal Act 1975 in respect of proceedings under this Part:

(a) a decision given by a person on behalf of an agency shall be deemed to have been

given by the agency; and

(b) in the case of proceedings by virtue of section 39, the agency or Minister to which or to whom the request was made shall be a party to the proceedings.

#### Onus

41. In proceedings under this Part, the agency or Minister to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Tribunal should give a decision adverse to the applicant.

Application of Section 28 of Administrative Appeals Tribunal Act

42. Where, in relation to a request, the applicant has been given a notice in writing complying with section 22, section 28 of the *Administrative Appeals Tribunal Act* 1975 does not apply to the decision on that request.

Orders under Section 35 of Administrative Appeals Tribunal Act

43. In proceedings under this Part, the Tribunal shall make such order under sub-section 35 (2) of the Administrative Appeals Tribunal Act 1975 as it thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant, in the proceedings, of exempt matter.

### Production of Exempt Documents

44. (1) Where there are proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, section 37 of the Administrative Appeals Tribunal Act 1975 does not apply in relation to the document but if the Tribunal is not satisfied, by evidence on affidavit or otherwise:

(a) that the document is an exempt document; and

(b) in the case of a document that is an exempt document by virtue of a certificate of the Attorney-General under section 36, that the giving of the certificate was justified, it may require the document to be produced for inspection by members of the Tribunal only and if, upon the inspection, the Tribunal is satisfied that the document is an exempt document and, in the case of a document referred to in paragraph (b), that the giving of the certificate was justified, the Tribunal shall return the document to the person by whom it was produced without permitting any person other than a member of the Tribunal

as constituted for the purposes of proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

(2) The Tribunal may require the production, for inspection by members of the Tribunal only, of an exempt document for the purposes of determining whether it is practicable for an agency or a Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a requirement, the Tribunal shall, after inspection of the document by the members of the Tribunal as constituted for the purposes of the proceeding, return the document to the person by whom it was produced without permitting any person other than such a member of the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

(3) Notwithstanding sub-sections (1) and (2) but subject to sub-section (4), the Tribunal is not empowered, in any proceedings, to require the production of a document in respect of which there is in force a certificate under sections 23, 24 or 25.

(4) Where a certificate of a kind referred to in sub-section (3) identifies a part or parts of the document concerned in the manner provided in sub-sections 23(3), 24(3) or 25(3), sub-section (3) does not prevent the Tribunal from requiring the production, in proceedings before the Tribunal under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.

(5) Sub-sections (1) and (2) apply in relation to a document in the possession of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in those sub-sections to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister.

(6) Sub-section (1) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that sub-section to be sent to the Federal Court of Australia in accordance with section 46 of the Administrative Appeals Tribunal Act 1975, but, where such a document is so sent to the Court, the Court shall do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than a member of the Court as constituted for the purpose of the proceedings before the Court or a member of the staff of the Court in the course of the performance of his duties as a member of that staff.

# Evidence of Certificates

45. In proceedings before the Tribunal under this Part, evidence of a certificate under sections 23, 24 or 25, including evidence of the identity or nature of the document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of the document to which it relates.

#### PART VI-MISCELLANEOUS

Protection Against Actions for Defamation or Breach of Confidence

- 46. (1) Where access has been given to a document and:
- (a) the access was required by this Act to be given; or
- (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 21 or 38, to make decisions in respect of requests, in the bona fide belief that the access was required by this Act to be given,

no action for defamation or breach of confidence lies, by reason of the authorizing or giving of the access, against the Commonwealth or an agency or against the Minister or officer who authorized the access or any person who gave the access.

(2) The giving of access to a document (including an exempt document) in consequence

of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the document or of its contents by the person to whom the access was given.

Protection in Respect of Offences

47. Where access has been given to a document and:

(a) the access was required by this Act to be given; or
(b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 21 or 38, to make decisions in respect of requests, in the bona fide belief

that the access was required by this Act to be given,

neither the person authorizing the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorizing or giving of the access.

Reports to Parliament

48. (1) The Minister administering this Act shall, as soon as practicable after the end of each year ending on 31 December prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the Parliament.

(2) Each agency shall, in relation to the agency, and each Minister shall, in relation to his official documents, furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

Regulations

49. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to:

(a) the making of charges of amounts, or at rates, fixed by or in accordance with the regulations for access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and

(b) the officers who may give decisions on behalf of an agency.

(2) Where, as a result of a request, access is given to an exempt document, regulations under this Act relating to charges apply as if the access had been given in accordance with this Act.

# Public Right to Access

[The following are excerpts from the Green Paper, published in 1979, by the UK Government dealing with openness in government in the British context.]

The major argument for a public right of access is basically that those seeking information have the right to obtain what they want when they want it, subject to clear exemptions, rather than having to wait on a government initiative or discretion to release material.

Among those in this country who support a public right of access to information there is no consensus about the means by which this should be secured. All have examined foreign experience, especially in Sweden and the United States, and have drawn heavily on varying features in the legislation in these countries. The National Executive of the Labour Party (NEC) favour a Freedom of Information Act which would apply to the records of both central and local government, of nationalised industries and other organisations in the public sector, of police authorities and of universities and colleges. The Outer Circle Policy Unit similarly favours an Act but would confine it to central government and regional and area health authorities. This is the approach adopted in the Official Information Bill still before the House of Commons. Justice, the British section of the International Committee of jurists, also favours a general right of access to government files, in the form not of a legal right but of a code of practice monitored by the parliamentary commissioner for administration (who is also given a similar function under the Official Information Bill).

All these schemes, and those abroad, include provision for the exemption from disclosure of documents within various categories. The proponents of a public right of access seek in this way to reconcile the need for more openness with the recognition of the need for an appropriate degree of confidentiality in cases where they believe it to be required. But there is considerable variation in the categories exempted. As in the countries studied abroad, all the proposals referred to above would provide exemptions for information relating to national security or defence, international relations, most law enforcement and the investigation of crime, the confidence of the citizen, and Cabinet papers. The NEC scheme would extend the exemptions to certain matters of labour relations, and 'Justice' would extend them to commercial and industrial matters, advice to ministers and to internal working papers. The Official Information Bill in its present form, on the other hand, contains none of these additional categories.

The discussions during the committee stage of the Official Information Bill currently before parliament have usefully served to focus attention on three major issues on which decisions must be taken before any system providing a public right of access is introduced in this country. These issues can conveniently be discussed under three headings: the extent to which the scheme has retrospective effect; the extent to which certain categories of information are exempted from the scheme; and the choice of machinery for monitoring or enforcing the application of the scheme.

From the administration's point of view, the difficulties of providing access would vary according to whether such access was to be confined to documents written after the right was created (following the practice adopted by most other countries) or made retrospective, (as proposed in the Official Information Bill).

Files contain a range of documents, both classified and unclassified, relating to individuals or containing material it would generally not be in the public interest to reveal. Before a right of access was created this material will have been compiled and written without the knowledge of this right of access and may prove difficult to separate. For example, discussion of exchange control policy might contain examples of evasion, where companies' or individuals' names are included. Even if deleted, those people with enough knowledge and experience in this field can either deduce the correct names or, worse, speculate about several names, with potentially unacceptable consequences for subsequent law enforcement. Experience abroad, especially in America, has shown how difficult it is to be sure that exempted material is really protected where partial access is involved. Also, 'political' (i.e., policy) arguments are often expressed alongside 'factual' points. This system is the natural corollary of the protection which internal communications have hitherto enjoyed, and for administrative purposes (whether inside a government department or a private firm), it is far the most convenient and efficient system. To make material available under a public right of access would pose considerable problems both of principle and of practice. This applies equally to the sifting out of complete documents, as it does to the editing of partially exempt matter.

First, all material falling within one or more of the categories of information exempted under the scheme would have to be removed before the file was handed over for inspection and that could be a major undertaking, often involving decisions at a senior level. This has proved a formidable task in the United States, where retrospection and the huge quantity of material has complicated what is seen, in any case, on current files, as an exercise fraught with interpretative difficulty, especially where definitions of exemptions have to be tested in the courts. All Scandinavian countries acknowledge this area to be one offering some of the greatest problems particularly where the courts have a major role, and where this results in

rulings which are not always consistent.

Then there is the matter of scale and attendant costs. One ministry in Whitehall alone has between 3 and 4 million files in current use plus over 100 miles of shelving in archives which are still closed under the 30 year rule for public records. It has been suggested that the 30 year period of closure for public records should be reduced. This is an issue of importance both to historians and to the search for more open government, and in those respects a reduction might be welcome. However, the 30 year period compares favourably with that adopted in other countries. A reduction would require legislation and would involve substantial costs, over and above those entailed by further measures to achieve openness in present day government. In any event it would not remove the problems associated with public access to more recent material. The sheer volume now in existence and stored under the present system would create major administrative and manpower implications in classifying, sifting and making documents available. Much of this material might be exempt, but a system would have to be devised to help the applicant find disclosable documents of interest to him.

Moreover, there is a significant issue of principle entailed in altering retrospectively the character of a document. Even when 'exempt' material has been removed from a file, what remains available for access will have been written by people who believed they were writing in confidence. Such people would not only be civil servants. There will be representatives of organisations or companies outside central government, or private citizens.

They are entitled to consideration.

## EXEMPTIONS FROM DISCLOSURE

The character and effects of schemes which include a public right of access are largely determined by the extent to which certain categories of information are exempt from disclosure. As was pointed out earlier, there is general acceptance of the need for certain

exceptions from a general right, and there are certain common features in the categories of information which are exempted from disclosure under schemes which exist overseas, as well as in various proposals which have been advanced in this country. It is notable that, with the exception of the Official Information Bill, all these schemes and proposals would exempt from disclosure working papers including those which contain advice from officials (though even that Bill accepts that in this case the application of a right of access should be modified).

The question how far papers relevant to the formulation of policy should be open to disclosure raises difficult issues. A great deal of such information is already published in the form of Green Papers, discussion documents, evidence to inquiries and the like. It is argued however that public participation in the formulation of government policy requires a much greater readiness to disclose the considerations, opinions and arguments which were can vassed in reaching a particular decision. It is sometimes held that information about internal disagreements amongst ministers or between ministers and their advisers, since they must inevitably occur in any case, is necessary for full public understanding of the reasons why certain policies were adopted, and certain courses followed.

Against this, there is the more compelling argument that those who come together and act jointly in pursuit of a common purpose need the assurance of privacy in their deliberations. This is true of any walk of life and in any organisation, be it social, commercial or political; and government is no exception. Unless the participants can talk freely among themselves, possibilities and opinions which may be unpopular or embarrassing may not be adequately explored and discussed. The private conversation would tend to assume importance at the expense of thorough discussion by the whole body, to the detriment of sound decision-taking and the orderly conduct of business. Moreover, under our constitutional conventions civil servants have for the most part been anonymous, offering advice in the assurance of confidence and hence free to express their views frankly. It is their duty to expose even uncomfortable facts or aspects of a question in order to present as full a picture as possible of the issues which ministers have to decide and for which they are accountable to parliament. The alteration of the conventions within which they at present proffer advice could well affect adversely the value of that advice.

Another important category which should be considered for exemption is commercial information, whether disclosed voluntarily or not, or whether received by, or generated by, the government. Disclosure of such information, without the consent of those who supplied it, could undermine government's relations with industry and could jeopardise competitive positions. Where government is itself trading or exploiting information it owns, it would give an advantage to its competitors, including those overseas, and allow opportunities for the results of research which had been financed from public funds to be exploited for private gain.

The exceptions to the obligation to disclosure must clearly include information whose unauthorised disclosure would be an offence under a revision of the Official Secrets Act, but they should also encompass certain other categories, including financial and economic matters whose publication could be damaging (e.g., to the reserves or the exchange rate).

Rather different considerations arise in dealing with proposals for the publication of manuals and guides dealing with the administration of major areas of legislation, particularly in the taxation and social security fields. Much of this information of course should be available to the general public and indeed is already provided in other publications. But there is also material which offers guidance and advice to officials on such matters as the detection of fraudulent claims for benefits and the evasion of taxes and duties. To make these parts of the internal manuals generally available would clearly be contrary to the best interests of the community at large.

The schemes of public right of access studied abroad have given individual members of the public a legal entitlement and they have imposed legal obligations on ministers. The courts have been given the task of resolving disputes about access as matters of fact and law. Decisions, for example, as to whether particular documents fell within an exempt category or not would be for legal interpretation, and enforcement by a judicial process. Many of the cases which have come before the courts in other countries have required a

good deal of difficult interpretation, often in politically contentious fields.

It is doubtful whether in the British context such essentially political matters could best be determined in the courts. As an alternative it might be suggested that the monitoring responsibility should lie with a new tribunal or office, or that an existing body or office-holder, such as the parliamentary commissioner for administration, might be given this jurisdiction. In either case political judgement would be replaced by the jurisdiction of a quasi-judicial body. The tribunal or office-holder would decide cases of dispute and where necessary (independently of the view of parliament) pronounce strongly against the ministerial decision. It would, as a consequence, be directly drawn into judgements in difficult and controversial political areas. For the parliamentary commissioner, this would represent an entirely different role of a quasi-judicial character with the PCA acting more as a court than as an investigating office in support of members of parliament.

A public right of access to information in general policy areas, where the ultimate responsibility for disclosure lay with the courts or with a quasi-judicial tribunal or office-holder, would represent a substantial change in the existing constitutional arrangements in this country. Where government transactions directly affect the interest of the individual citizen, the roles of the courts, or quasi-judicial bodies of one kind or another and of the PCA, including jurisdiction over the production of documents by government in relation to particular cases if the provision of information in general policy areas, with their largely political content, were made a matter for legal or quasi-legal judgement rather than of

accountability to parliament.

### THE WAY FORWARD

The issues discussed in the paragraphs above, notably in respect of retrospective application and of enforcement, are raised in an extreme form by the scheme provided for in the Official Information Bill. Overseas experience amply demonstrates the desirability of an evolutionary approach in this field and the government cannot accept that a statutory right of access which could affect adversely and fundamentally the accountability of ministers to parliament is the right course to follow. There are other methods of securing more open government which do not carry such dangers.

The freedom of information systems that have been developed in other countries have to be seen in the context of the constitutional arrangements of those countries, and their relevance to our situation must be examined in the light of differences between those constitutional arrangements and our own. This is of particular importance in considering the role played by the courts in other countries. In our constitutional system the government is in parliament; members of the government are almost invariably members of parliament; it is to parliament that government is accountable; it is to parliament that the government comes for legislative sanction for its policy decisions; it is in parliament in the first instance that the government explains and defends its actions. An approach to greater openness that does not respect these fundamental features of our system—and indeed other features, such as the collective responsibility of ministers and their relationships with their civil servants—will undermine rather than strengthen British parliamentary democracy.

In the government's view the essential requirements of any scheme of access to official information is that it should satisfy public demand so far as is reasonable and practicable; that it should be fully compatible with the constitutional and parliamentary systems of this country; and that the costs should be commensurate with the public benefit.

Greater openness by any means is costly although opinions differ as to the cost of any

given approach. But the government at any rate cannot shirk the fact that extra money and staff for the release of information can only be made available if they are diverted from some other use. Public expenditure is necessarily under constraint, and any decision to spend more involves a difficult choice between priorities. More money for information means less money for something else. Resource constraints, as well as experience overseas, suggest that a gradual approach is called for.

There is no doubt that more can be done to secure the aims of the information directive described earlier. Departments can improve the arrangements which they make for replying to enquiries for background information and for assembling information in response to them. More departments can prepare and make available on request—as some do already—an index under appropriate headings of departmental subjects showing what material has been published, what is available on request, and what can be expected (e.g., material in course of preparation, regular returns with the dates when they are produced), together with a general statement of individual departmental practice.

In conjunction with this list, departments might offer a service through their libraries which would supply copies of material listed in the index, or alternatively provide access to them on the premises. The libraries could also, on suitable occasions, refer enquirers to the appropriate departmental officials for information on current issues which was not available on library papers.

Nevertheless, it is generally agreed that developments such as these, valuable as they are as improvements to the present system, do not go far enough, and do not satisfy legitimate criticism that not enough information has been released under the directive. A more substantial initiative is necessary.

It is acknowledged that the blanket coverage of Section 2 of the Official Secrets Act 1911 has outlived its usefulness. It is not disputed, however, that some information requires the protection of the criminal law against unauthorised disclosure. There is broad agreement on the categories to be protected, and the form which statutory protection should take. The government's proposals for new legislation in this regard were set out in the White Paper of July 1978\*. There can be and are differences of opinion on detail; but the time is now ripe to bring this matter to a legislative conclusion, on the general lines of the White Paper. This remains, in the government's view, a necessary precursor to greater openness.

## A CODE OF PRACTICE

A code of practice on access to official information, which the government was fully committed to observe, would be a major step forward. Such a scheme could be devised to meet the essential requirements set out above. Access would be given to official documents and information other than in fields which were specifically exempted from the operation of the code. The initiative in the release of material would no longer rest exclusively with the government. But accountability to parliament would be retained and the jurisdiction of the courts excluded. There would be no retrospective application.

A code of practice is the central feature of the non-statutory scheme canvassed by Justice in their report† on freedom of information. The key to the successful introduction and operation of any code of practice would lie in the way in which a government signified its commitment to the working of the code. This would set the standard by which ministerial operation of the code would be judged. A statement of intent, whereby ministers undertook to consider all requests for documents and information favourably unless there were overwhelming and publicly declared reasons to decide against release, would create a climate of openness within a short time of the code being introduced. Ministers would exercise their

<sup>\*</sup>Reform of Section 2 of the Official Secrets Act 1911 (Cmnd. 7285) "Freedom of Information", a report by *Justice* (London 1978).

discretion within the spirit of the statement of intent and would be committed to providing access wherever possible, even where a document would be formally exempted under the provisions of the code.

The drawing up of a code would not be easy. As the *Justice* code illustrates, the same issues arise as under any scheme for a statutory right of public access to documents—the definition of exempted material, retrospective application and enforcement, discussed in the paragraphs above. The authors of the *Justice* code tackle these issues by suggesting a set of categories of information which would normally be exempt from disclosure, restricting the formal application of the code to material prepared after the code comes into effect, and proposing that the exercise of ministerial discretion in applying the code should be subject to monitoring by the parliamentary commissioner for administration.

There is scope for discussion about the detailed content of a code, and in particular the definitions of categories of information which would be exempt from disclosure. The choice of parliamentary commissioner as the monitoring authority under the *Justice* scheme needs careful consideration since this choice has the implications for his existing functions which have already been discussed, and some other alternative machinery which avoided these potential difficulties might have to be found. Although the PCA would not have the final word, as would a court, the judgement he would arrive at would in many cases be different in quality from the conclusions he reaches when investigating complaints of maladministration.

However, the government favours a code of practice approach. Its advantages lie not only in creating the right climate which would inform all considerations of requests to make material available, but also in the flexibility of the system in defining the categories of documents which would be exempt. The code could be readily revised, especially if early experience of its operation showed it to be either unnecessarily restrictive in some areas, or not precise enough in others. The government believes such a code will significantly increase the amount of information, chosen by an inquirer, that will be made available. It therefore offers an assurance of a significant development of open government which would be consistent with the overriding principle of ministerial accountability to parliament.

The detailed provisions of such a code; the question of whether or not it should, from its introduction, be put on a statutory footing, and if so, in what form; and the appropriate choice of machinery for monitoring the code's application, are matters for further detailed examination. It would be the government's intention to recommend to parliament that a select committee of the House of Commons should be appointed for this purpose.

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# Access to Administrative Information

[The Netherlands' Access to Administrative Information Law came into force in November 1978. Given below is the text of the Law.]

## Article 1

1. A request for information, addressed to a government body, shall be complied with unless there is an objection to this on any of the grounds referred to in Article 4. By government bodies this Act understands: Our ministers, administrative bodies of provinces and municipalities, and any other bodies designated by a General Order in Council.

2. A request for information, contained in documents drafted for the benefits of internal

consultation, shall be granted except in so far as they relate to:

(a) data still being processed or which, although ready, would give as such an incomplete and therefore an inaccurate picture;

(b) personal views of those who bear political responsibility or public servants. Information will be given about factual data concerning the matter to which the request relates, prognoses and policy alternatives, contained in these documents.

3. By General Order in Council, rules will be laid down concerning the application of the

provisions of the first and second paragraphs above.

4. Further rules concerning the application of the provisions of the paragraphs 1-3 and of the General Order in Council, mentioned in paragraph 3, may be fixed;

(a) by the Prime Minister in concurrence with the feeling of the council of ministers for

the field of central government and

(b) by the administrations of provinces and municipalities and the other government bodies, designated in virtue of the first paragraph of this Article for their fields.

#### Article 2

1. The government body directly concerned shall of its own accord provide information about its policy, including the preparation and implementation thereof as soon as this is in the interests of a sound and democratic administration.

2. The government body shall exercise care to ensure that the information is supplied in an intelligible form; in such a way that it reaches interested parties and persons as far as possible; and that it is made available in time for such parties to be able to state their views in due time in the course of the administrative process.

## Article 3

1. Without prejudice to the provisions of law concerning publication laid down elsewhere, our minister who is directly concerned shall see to the publication of policy recommendations made to the central government by external advisory commissions, where necessary and if possible accompanied by explanation. Publication takes place within thirty days after these recommendations have been received.

2. External advisory commissions are bodies whose task it is to advise Us or Our ministers and whose members include no public servants, part of whose function includes advising their own Minister on the problems confronting the advisory commission.

A public servant who is the secretary or a consultative member of an advisory commission, shall not be regarded as a member thereof for the purposes of this provision.

- 3. Recommendations may be made public by:
- (a) incorporation of them in a generally available publication, or
- (b) making them generally available in a separate publication, or
- (c) making copies available for public inspection, retention or loan.
- 4. The publication shall be communicated in the Netherlands Official Gazette.

# Article 4

The information pursuant to Articles 1 to 3 shall not be divulged if it might:

- (a) endanger the unity of the crown, or
- (b) damage the security of the state.
- It shall also not be divulged if it concerns
- (c) data of enterprises and production processes in so far as they have been furnished to the government confidentially.

Nor shall it be divulged if and in so far as its importance does not outweigh the following interests:

- (d) the Netherlands relations with other countries;
- (e) the economic and financial interest of the state and other statutory bodies;
- (f) the detection and prosecution of punishable acts;
- (g) inspection, control and supervision by or on behalf of government institutions;
- (h) the right of each individual to respect for his personal privacy and the protection of the results of medical and psychological examinations relating to individual cases;
- (i) the prevention of unfair advantage or disadvantage to the natural or legal persons concerned, or to third parties.

### Article 5

- 1. Before three years have elapsed from the time this Act comes into force, then subsequently every five years thereafter, Our Prime Minister, Minister of General Affairs and Our Minister of Home Affairs shall send to the States-General a report on its implementation.
- 2. This report shall incorporate the findings of the government bodies referred to in Article 1, of administrative scientists, of representatives of the publicity media and representatives of the national public servants' organisations.

## Article 6

The provisions of Articles 3 and 4 apply, or as the case may be, apply correspondingly to recommendations produced for provincial and municipal administrations as well as for the other bodies designated pursuant to Article 1. Such publication shall be the responsibility of these bodies; it shall be announced in an appropriate periodical.

#### Article 7

Without prejudice to legal provisions laid down elsewhere, rules may be laid down pursuant to a General Order in Council setting fees charged for requested documents supplied by institutions of the central government under the provisions of Articles 1 to 3.

#### Article 8

This Act does not impose the obligation to divulge recommendations produced before the Act takes effect.

#### Article 9

The Council of State Act shall be amended as follows. A new Article shall be inserted under Article 25, stating;

# Article 25a

1. Our minister who is directly concerned shall exercise care to ensure the publication of:

(a) recommendations by the Council requested by Us concerning Bills, agreements with other powers and International Legal Organizations and drafts of General Orders in Council and of other Royal Decrees;

(b) recommendations and other proposals made to Us pursuant to Article 16.

2. Publication of the recommendations referred to in paragraph 1(a) shall take place together with publication of the text submitted to the Council, in so far as this has been amended after the advice was requested, and of the subsequent report to Us. This shall take place as follows:

—for recommendations concerning Bills lodged by Us: simultaneously with their submission to the Second Chamber of the States-General;

—for recommendations of Bills made to Us by the States-General: simultaneously with the promulgation of the Act or, if We do not approve the Bill, simultaneously with the publication of the subsequent report to Us;

—for recommendations concerning agreements with other powers and international legal organizations to be submitted to the States-General for tacit approval: simultaneously with their submission to the States-General;

—for recommendations concerning General Orders in Council and other Royal Decrees: simultaneously with their promulgation.

Publication of nominations and other proposals made to Us pursuant to Article 16, shall take place together and simultaneously with publication of the subsequent report to Us. It shall take place in the manner prescribed in Article 3, paragraphs 3 and 4 of the Openness of Administration Act.

3. Publication shall not take place:

(a) in the cases referred to in Article 4 of the Openness of Administration Act;

(b) if any recommendation referred to in paragraph 1(a) reflects unqualified approval, or contains only editorial observations.

4. The Council's recommendations, referred to in paragraph 1 hereof shall contain proposals concerning the application of the provisions of paragraph 3.

### Article 10

This Act may be cited as Openness of Administration Act. It shall come into force at a date to be determined by Us.

General Order in Council in Pursuance of Article 1 of the Law on the Access to Administrative Information

#### Article 1

By 'information' is understood: data, laid down in documents, 'documents' are: written papers and other material containing data and held by government bodies and by institutions, services and enterprises, which operate under the responsibility of these bodies. 'documents' do not include drafts and copies of papers to be sent or which have been sent, until it may be assumed that these have reached the addressee.

#### Article 2

A request for information may be made to government bodies and to institutions, services and enterprises, which operate under the responsibility of these bodies. The applicant shall state the matter on which he wishes to receive information.

#### Article 3

The decision on a request for information shall be taken by or on behalf of the government body.

## Article 4

- 1. The government body shall provide the information by:
- (a) giving a copy,
- (b) allowing cognizance to be taken of the contents of,
- (c) giving an excerpt or summary of the contents of,
- (d) furnishing oral information about the contents of the documents containing the desired information.
- 2. The government body shall provide the information within a reasonable space of time.

# Article 5

In choosing between the forms of information referred to in Article 4, the government body shall be guided by the preference of the enquirer, with this understanding, that the importance of smooth progress of work is taken into consideration, and that the information provided concerning documents drawn up for internal consultation is couched in an unattributable form.

## Article 6

A decision to reject a request for information shall be conveyed to the enquirer in writing and stating motives should the enquirer persist by his request.

# Article 7

If the request relates to data held by a government body or by an institution, service or enterprise operating under its control other than the one to which the request has been addressed, the enquirer shall be directed to go there. If the request has been made in writing, then it shall be forwarded and the enquirer notified of this forwarding.

# The Official Secrets Act, 1923

[India's Official Secrets Act goes back to 1923. It was subsequently amended, marginally, from time to time. We are reproducing the text of the Act indicating the amendments in the footnotes.]

# THE OFFICIAL SECRETS ACT 1923

Act No. 19 of 19231

An Act to consolidate and amend the law 2\* \* \* relating to official secrets.

(2nd April 1923.)

8\* \* \* \* \*

Whereas it is expedient that the law relating to official secrets \* \* should be consolidated and amended;

It is hereby enacted as follows :-

Short Title, Extent and Application

<sup>4</sup>[1. (1) This Act may be called the Official Secrets Act, 1923.

(2) It extends to the whole of India and applies also to servants of the Government and to citizens of India outside India.]

**Definitions** 

2 In this Act, unless there is anything repugnant in the subject or context,-

(1) any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested in Government;

5\* \* \* \* \* \*

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole

1The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, 3 and Sch.; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I; Pondicherry by Reg. 7 of 1963, s. 3 and Sch. I and to Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, s. 3 and Sch.

<sup>2</sup>The words "in the Provinces" were omitted by the A.O. 1950.

First two paragraphs of the Preamble were omitted, *ibid*.

4Subs. by Act 24 of 1967, s. 2, for the former section.

<sup>5</sup>Cl. (1a), ins. by the A.O. 1937, was rep. by the A.O. 1948.

or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

(3) "document" includes part of a document;

(4) "model" includes design, pattern and specimen:

- (5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;
- (6) "office under Government" includes any office or employment in or under any department of the Government 6\* \* \*;
  - (7) "photograph" includes an undeveloped film or plate;
  - (8) "prohibited place" means:
  - (a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, Government, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dock yard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;
  - (b) any place not belonging to Government where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, Government, or otherwise on behalf of Government;
  - (c) any place belonging to or used for the purpose of Government which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;
  - (d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of Government, which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;
- (9) "sketch" includes any photograph or other mode of representing any place or thing; and

<sup>6</sup>The words "or of the Government of the United Kingdom or of the British possession", omitted by Act 24 of 1967, s. 3.

<sup>7</sup>Cl. (9A) ins. by the A.O. 1950, was rep. by Act 3 of 1951, s. 3.

(10) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Central Government.8\* \* \*

#### Penalties for Spying

- 3 (1) If any person for any purpose prejudicial to the safety or interests of the State:
- (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or
- (c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy of which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States]:

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section <sup>10</sup>\* \* \*, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct of his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, <sup>11</sup>(information, code or pass word shall be presumed to have been made), obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

## Communications with Foreign Agents to be Evidence of Commission of Certain Offences

4. (1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without <sup>12</sup>(India), shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

<sup>8</sup>The words "or by any L.G." were rep. by the A.O. 1937.

<sup>&</sup>lt;sup>9</sup>Ins. by Act 24 of 1967, s. 4.

<sup>10</sup> The words "with imprisonment for a term which may extend to fourteen years" omitted by s. 4, ibid.

<sup>11</sup>Subs. by s. 4, ibid., for "or information shall be presumed to have been made".

<sup>12</sup>Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

- (2) For the purpose of this section, but without prejudice to the generality of the foregoing provisions,:
  - (a) a person may be presumed to have been in communication with a foreign agent if:
    - (i) he has, either within or without <sup>13</sup>(India), visited the address of a foreign agent or consorted or associated with a foreign agent, or
    - (ii) either within or without <sup>13</sup>(India), the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;
  - (b) the expression "foreign agent" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without <sup>13</sup>(India), prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without <sup>13</sup>(India), committed, or attempted to commit, such an act in the interests of a foreign power;
  - (c) any address, whether within or without <sup>13</sup>(India), in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

#### Wrongful Communication, etc., of Information

- 5. (1) If any person having in his possession or control any secret Official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place. <sup>14</sup> (or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act,) or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract;
  - (a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or
  - (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or
  - (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

<sup>18</sup> Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

<sup>&</sup>lt;sup>14</sup>Subs. by Act 24 of 1967, s. 5, for "or which has been made or obtained a contravention of this Act".

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information;

he shall be guilty of an offence under this section.

- (2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.
- (3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.
- <sup>15</sup>[((4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three ears, or with fine, or with both.]

#### Unauthorised Use of Uniforms, etc.

- 6. (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or any other purpose prejudicial to the safety of the State:
  - (a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
  - (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
  - (c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or
  - (d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass words has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or
  - (e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of an offence under this section.

- (2) If any person for any purpose prejudicial to the safety of the State:
- (a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof: or
- (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police-officer; or
- (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid;

he shall be guilty of an offence under this section.

- (3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to <sup>16</sup> (three years), or with fine, or with both.
- (4) The provisions of sub-section (2) of section 3 shall apply for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section.<sup>17\*</sup> \* \*

### Interfering with Officers of the Police

- 7. (1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede any police-officer, or any member of <sup>18</sup>(the Armed Forces of the Union) engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.
- (2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to <sup>19</sup>(three years), or with fine, or with both.

#### Duty of Giving Information

- 8. (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police-officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of <sup>18</sup>(the Armed Forces of the Union) engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information
- (2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to <sup>20</sup>(three years), or with fine, or with both.

<sup>16</sup>Subs. by Act 24 of 1967, s. 6, for "two years".

<sup>&</sup>lt;sup>17</sup>The words "with imprisonment for a term which may extend to fourteen years" omitted by s. 6, *ibid*.

<sup>18</sup>Subs. by the A.O. 1950 for "His Majesty's forces".

<sup>19</sup>Subs. by Act 24 of 1967, s. 7, for "two years".

<sup>&</sup>lt;sup>20</sup>Subs. by s. 8, *ibid.*, for "two years".

9. Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

#### Penalty for Harbouring Spies

- 10. (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.
- (2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police-officer nor below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under section.
- (3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extent to <sup>21</sup>(three years), or with fine, or with both.
- 11. (1) If a Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate is satisfied byinformation on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police-officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.
- (2) Where it appears to a police-officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police-officer the like authority as may be given by the warrant of a Magistrate under this section.
- (3) Where action has been taken by a police-officer under sub-section (2) he shall, as soon as may be, report such action, in a presidency-town to the Chief Presidency Magistrate, and outside such town to the District or Sub-divisional Magistrate.
- 2212. The provisions of section 337 of the Code of Criminal Procedure, 1898 shall apply in relation to an offence punishable under section 3 or under section 5 or under section 7 or under any of the said sections 3, 5 and 7 read with section 9, as they apply in relation to an offence punishable with imprisonment for a term which may extend to seven years.]
- 13. (1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the <sup>23</sup>(appropriate Government) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.
- (2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwith-standing that it is not a case exclusively triable by that Court.
  - (3) No Court shall take cognizance of any offence under this Act unless upon complaint

<sup>&</sup>lt;sup>21</sup>Subs. by Act 24 of 1967, s. 9, for "one year".

<sup>&</sup>lt;sup>22</sup>Subs. by s. 10, ibid., for the former section.

<sup>&</sup>lt;sup>23</sup>Subs. by the A.O. 1937 for "L.G.".

made by order of, or under authority from, the  $^{24}$ (appropriate Government)  $^{25*}$  \* or some officer empowered by the  $^{1}$ (appropriate Government) in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in <sup>27</sup>(India) in which the offender may be found.

<sup>28</sup>[(5) In this section, the appropriate Government means:

- (a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and
- (b) in relation to any other offence, the Central Government.]

#### Exclusion of Public from Proceedings

14. In addition and without prejudice to any powers which Court, may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

#### Offences by Companies

<sup>29</sup>[15. (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. : For the purposes of this section :

- (a) "company" means a body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.)
- 16. (Repeals.) Rep. by the Repealing Act, 1927 (12 of 1927) s. 2 and Sch.

<sup>&</sup>lt;sup>24</sup>Subs. by the A.O. 1937 for "G.C. in C.".

<sup>25</sup>The words "the L.G." were omitted, ibid.

<sup>&</sup>lt;sup>26</sup>Proviso omitted by Act 24 of 1967, s. 11.

<sup>&</sup>lt;sup>27</sup>Subs. by Act. 3 of 1951, s. 3 and Sch., for "the States".

<sup>&</sup>lt;sup>28</sup>Ins., by the A.O. 1937.

<sup>&</sup>lt;sup>29</sup>Subs. by Act 24 of 1967, s. 12 for the former section.

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